

THE NATIONAL ARCHIVES: A HISTORY OF THE POWERS OF THE
ARCHIVIST AND AGENCY EFFORTS TO ADDRESS ELECTRONIC MEDIA

In response to several recent events, historians and other interested parties have suggested that the authority of the Archivist of the United States over records management practices of the Federal government should be strengthened. Many of these same persons have also voiced the opinion that the Archivist is not exercising existing statutory powers. A brief history of certain archival powers helps to place these concerns in a historical perspective. In addition, a chronology of agency efforts to deal with electronic media issues addresses related concerns that the National Archives has not been responsive to the rapid pace of technology.

The National Archives was originally established in 1934 by legislation entitled "An Act to establish a National Archives of the United States Government, and for other purposes."¹ The Act stated that all archives or records belonging to the government of the United States would be under the charge and superintendence of the Archivist.² The Act gave the Archivist full power to inspect the records of any agency of the United States Government and provided the Archivist with the power to requisition for transfer to the National Archives records of other agencies of the United States Government.³ The Act also provided heads of executive departments, independent offices, or other agencies of the Government with a limited power to exempt from examination and consultation confidential matter transferred from their offices or departments.⁴ Fifteen years later, in an effort to streamline Government functions, the National Archives became a part of the General Services Administration (GSA) as the National Archives and Records Service (NARS).⁵ The powers of the Archivist were transferred to the Administrator of General Services, who became the government official in charge of records management.⁶

Soon after the transfer of the Archives to GSA, the Administrator of General Services was granted additional authority over records management practices by the Supplemental Appropriations Act of

¹ Ch. 668, 48 Stat. 1122 (1934).

² Id., § 3, at 1122.

³ Id.

⁴ Id.

⁵ Federal Property and Administrative Services Act of 1949, Pub. L. No. 152, § 104, 63 Stat. 377, 381 (1949).

⁶ Id.

1955.⁷ his legislation provided the Administrator of General Services with "final authority in matters involving the conduct of surveys of Government records, and records creation, maintenance, management and disposal practices in Federal agencies, pursuant to section 395 and 296 of this title, and the implementation of recommendations based on such surveys."⁸ This statute was interpreted by GSA to provide the Administrator with final authority over all phases of records management.

In 1976, the powers of the Administrator were amended by the Records Management Amendments to the Federal Records Act which deleted section 2910 from the chapter (44 U.S.C. § 296(a) was renumbered as § 2910 in 1968, see supra note 7, at 2).⁹ In omitting the specific language of 2910, the framers of the 1976 amendments expressed the belief that its provisions were distributed throughout the revised chapter 29, therefore making the clause redundant.¹⁰ However, the wording of 2910 was so specific in granting final authority to the Administrator in records management practices, that its deletion resulted in the perception on the part of some Federal agencies that the Administrator's authority was diminished.

The actual effect of deleting section 2910 became clear in 1981

⁷ Pub. L. No. 663, 68 Stat. 800 (1954).

⁸ Id. This section, as codified at 44 U.S.C. § 396(a), was modified in 1968 to reflect new section numbers in the title and renumbered as § 2910. Pub. L. No. 90-620, 82 Stat. 1238, 1297 (1968).

⁹ Federal Records Management Amendments of 1976. Pub. L. No. 94-575, § 2(a)(4), 90 Stat. 2723, 2723 (1976).

¹⁰ (4) Deletion of 44 U.S.C. 2910

This paragraph strikes out sections [sic] 2910 "Final Authority of Administrator in records practices", which provided specific authority for the Administrator in matters involving the conduct of surveys of Government records, and records creation, maintenance, management and disposal practices in Federal agencies, and the implementation of recommendations resulting from the surveys. This section can now be deleted because the authority of the Administrator is stated clearly in the new section 2904, "General responsibilities of the Administrator."

S. Rep. No. 1326, 94th Cong., 2d Sess. 6159 (1976). See also id., at 6150 (one purpose of the legislation is to consolidate the Administrator's authority over records management).

when a legal opinion from the Office of Legal Counsel (OLC) of the Department of Justice concluded that NARS was not authorized to promulgate standards or guidelines that would have binding effect on an agency's determination regarding records status. This opinion was the result of a request by the Archivist to inspect certain documents produced by Henry Kissinger's staff in order to determine the record status of the items. The request was denied by the State Department. A follow-up request resulted in a limited inspection of the materials by the Archivist's staff. Although considered necessary by the Archivist, further inspection was precluded by subsequent FOIA-related¹¹ legal action involving the materials.¹²

The issue of review of the materials for the purpose of identifying information of "record value" was again taken up after the resolution of the FOIA action in 1980. Kissinger and the State Department agreed on a review procedure that excluded the Administrator of GSA. The Administrator of GSA objected, contending that he should play a role. The matter was brought to the attention of the Office of Legal Counsel of the Department of Justice (OLC) and resulted in the issuance of an opinion on January 13, 1981. This opinion provided in part:

Agencies retain a measure of discretion in deciding whether materials are "appropriate for preservation." When Congress adopted the definition of "records" in the Records Disposal Act, it stated its intention to "place the responsibility in the first instance upon the agencies for determining what documentary materials should and what should not be preserved," and to "make it clear that [agencies] are not obliged to consider every scrap of paper on which writing or printing appears as a record." This legislative history suggests that it is the agency's discretion -- not that of GSA or the Archivist -- that is to be applied in determining whether certain materials are appropriate for preservation. Admittedly, agencies are required to comply with GSA regulations as to record disposal and to cooperate with the GSA in designing "standards, procedures, and techniques designed to improve the management of records." However, the GSA is not authorized to promulgate standards or guidelines that have binding effect on the agency's determination as to

¹¹ "FOIA" is the popular name for the Freedom of Information Act, as codified at 5 U.S.C. § 552.

¹² See Kissinger v. Reporters Committee, 445 U.S. 136 (1980).

whether a document constitutes a "record."¹³

The Kissinger matter served as a catalyst for the National Archives to take affirmative steps to restore the archival powers that had been lost as a result of the 1976 amendments. In 1982, the National Archives sought to have legislation enacted which would have made the Administrator the final arbiter on matters of records status and would have allowed the Archivist an unfettered ability to inspect agency records for purposes of records management. The proposed 1982 legislation included an amendment to section 2904 reading:

"The Administrator, in consultation with the Archivist of the United States, shall determine whether an item created by a Federal agency is a record as defined in section 3301 of this title. This determination shall be binding on all Federal agencies."

and an addition to title 44, reading:

"§2115. Archival access to restricted records.

Notwithstanding any restrictions on access imposed by statute or Executive Order, the Archivist and persons employed by the National Archives and Records Service of the General Services Administration who are engaged in archival work shall be permitted access to restricted records when carrying out their duties except for the provision of reference services to the general public under chapters 21, 29, and 33 of this title."¹⁴

¹³ Memorandum from John M. Harmon, Assistant Attorney General, Office of Legal Counsel to Allie B. Latimer, General Counsel, General Services Administration, at 5-6 (Jan. 13, 1981) (citations omitted).

¹⁴ This proposal was intended to broaden the existing power of the Administrator of General Services to inspect the records of Federal agencies. Specifically, the proposal was intended to clarify NARS authority to have access to records which had statutory restrictions or which were security classified in order to carry out archival functions such as inspecting agency records programs, appraising records to determine their historical value, and accessioning permanently valuable records in the National Archives of the United States. A version of this power was initially given to the Archivist by the Act establishing the National Archives in 1934, *supra* note 1, at 1. The existing power in 1982, however, limited the Administrator's access to certain sensitive records, thus hindering his ability to perform his duties. The current version of this power, which is identical to the version in existence in 1982, with the exception of minor

amendments in 1984 reads:

44 U.S.C. § 2906. Inspection of Agency Records

(a)(1) In carrying out their respective duties and responsibilities under this chapter, the Administrator of General Services and the Archivist (or the designee of either) may inspect the records or the records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs. Officers and employees of such agencies shall cooperate fully in such inspections, subject to the provisions of paragraphs (2) and (3) of this subsection.

(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator and the Archivist, subject to the approval of the head of the agency concerned or of the President. The regulations promulgated by the Administrator and the Archivist under this paragraph shall, to the extent practicable, be identical.

(3) If the Administrator or the Archivist (or the designee of either) inspects a record, as provided in this subsection, which is contained in a system of records which is subject to section 552a of title 5, such record shall be -

(A) maintained by the Administrator, the Archivist, or such designee as a record contained in a system of records; or

(B) deemed to be a record contained in a system of records for purposes of subsections (b), (c), and (i) of section 552a of title 5.

(b) In conducting the inspection of agency records provided for in subsection (a) of this section, the Administrator and the Archivist (or the designee of either) shall, in addition to complying with the provisions of law cited in subsection (a)(3), comply with all other Federal laws and be subject to the sanctions provided therein.

The National Archives and Records Administration Act of 1984 modified section 2906 by adding references to the Archivist in four places. Additionally, (a)(2), was modified to read: "The

The response by other Federal agencies to these legislative proposals was overwhelmingly negative. Among the concerns expressed regarding the proposed amendment to section 2404 included the notion that only agency officials have the expertise needed to identify official records. Commentators also suggested that the proposed change to section 2404 conflicted with 44 U.S.C. § 3101 which charges agency heads with responsibility for ensuring the creation and preservation of adequate and complete documentation of the organization, functions, policies, decisions, procedures, and essential transactions of their agencies. There was also a concern that GSA involvement in the process of determining record status would interfere with efficient agency operations. Agency responses to the proposed inspection authority centered around security and privacy concerns.

After considering these reactions, the National Archives decided to temporarily withdraw the proposed legislation in order to modify and clarify the language of the proposed amendments.

The National Archives again attempted to have legislation passed in 1983, in the 98th Session of Congress. The 1982 legislation was modified to provide that while the Administrator would still have binding authority to determine whether an item was or was not a record, the Administrator would make this determination in consultation with the creating agency.¹⁵ In addition, the inspection authority was revised to take into account agency concerns expressed about the 1982 proposed legislation.¹⁶

regulations promulgated by the Administrator and the Archivist under this paragraph shall, to the extent practicable, be identical." Pub. L. No. 98-497, § 107(a)(17), 98 Stat. 2280, 2289 (1984).

¹⁵ The proposed legislation read as follows:

"The Administrator, in consultation with the creating agency and the Archivist of the United States, shall determine whether an item created by a Federal agency is a record as defined in section 3301 of this title. This determination shall be binding on all Federal agencies."

¹⁶ The proposed legislation read as follows:

"§2115. Archival access to restricted records

Notwithstanding any restrictions on access imposed by statute or Executive Order, the Archivist and persons employed by the National Archives and Records Service of the General Services Administration with appropriate

Finally, NARS proposed that section 2910 be restored to grant final authority to the Administrator in records management matters.¹⁷

Once again, Federal agencies voiced strong concerns about the proposed legislation. Agencies complained that the legislation failed to specifically provide for the right of the agency itself to determine, according to its own expertise and procedures, whether or not any given individual should be granted access to records or information. Several agencies also pointed out that the fact that NARS employees might have appropriate national security clearances does not, in itself, authorize them to have access to very sensitive and highly compartmented national security and intelligence information, sources and methods. Some agencies felt it would be inappropriate to allow NARS what they felt would be unlimited access to sensitive proprietary data. Agency commentators also conceived of the legislation as an unnecessary intrusion upon the management prerogatives of the heads of Federal agencies and a dilution of the protections afforded by the Privacy Act of 1974.

In their comments regarding the proposed restoration of section 2910, agencies indicated that the 1976 Amendments to the Federal Records Act that deleted the section had the full support and endorsement of GSA and the Office of Management and Budget (OMB) and that the amendments were the result of several years of joint efforts by many interested parties. Several agencies stated

national security clearances who are engaged in archival work shall be permitted access to restricted records for purposes of-

(1) accessioning those records into the National Archives of the United States and preserving them under section 2103 of this title;

(2) inspection of an agency's records program under chapter 29 of this title; and

(3) determining, under section 3303a of this title, whether the records have or will have sufficient value to warrant their continued preservation by the Government."

¹⁷ "The Administrator of General Services shall have final authority in matters involving the conduct of surveys of Government records, and records creation, maintenance, management and disposition practices in Federal agencies, under sections 2904 - 2909 and 3101-3107 of this title, and the implementation of recommendations based on surveys."

their belief that GSA did not have the expertise required to wisely exercise this broad final authority and would not be able to recognize the impact final decisions under the authority might have on federal agencies.

Because of these negative agency responses, OMB decided to remove the proposed legislation from GSA's legislative slate for the 98th session of Congress.

In 1984, due in large part to Congressional recognition of the different missions of GSA and NARS,¹⁸ the National Archives and Records Service was granted independence from the General Services Administration and became the National Archives and Records Administration (NARA).¹⁹ As part of its independence legislation, the National Archives once again attempted to restore power to the Archivist and to broaden existing powers. The House independence bill included provisions making the Archivist of the United States the final authority in matters concerning the status of records and authorizing the Archivist to have access to agency material to determine compliance with his determinations and regulation with regard to record status. As had occurred in the past, a number of Federal agencies criticized these provisions. To insure passage of the independence bill, its supporters agreed to delete the records status and access provisions, but included in the accompanying report a requirement that the Archivist study the matter and offer recommendations to Congress regarding an appropriate authoritative role for the Archivist in records status questions.

The independence legislation did, however, make an addition to the Archivist's power. The Administrator already had the power to work with the head of an agency to initiate action through the Attorney General for the recovery of records wrongfully removed from the agency.²⁰ The independence legislation included a

¹⁸ See House Rep. No. 98-707, 2d Sess., 98th Cong., 4-6 (1984) (discussing the fact that the disparity of functions between the Archives and GSA had reduced the scope and effectiveness of the Archives programs).

¹⁹ National Archives and Records Administration Act of 1984, Pub. L. No. 98-497, 98 Stat. 2280 (1984).

²⁰ Versions of this power were initially provided for in the Federal Records Act of 1950, Pub. L. No. 754, §§ 505(b), 506(f), 64 Stat. 583, 585, 586. The current versions of this authority, found at 44 U.S.C. § 2905(a) and 44 U.S.C. § 3106 read:

§ 2905. Establishment of standards for selective retention of records; security measures

(a) The Archivist shall establish standards for the selective retention of records of continuing value, and assist Federal agencies in applying the standards to records in their custody. He shall notify the head of a Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that shall come to his attention, and assist the head of the agency in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law. In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

§ 3106. Unlawful removal, destruction of records

The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency of which he is the head the shall come to his attention and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed from his agency, or from another Federal agency whose records have been transferred to his legal custody. In any case in which the head of the agency does not initiate an action for such recover or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

These version are identical to the versions found in the 1952 United States Code except for the substitution of the Archivist for the Administrator, and several minor stylistic changes. Additionally, the independence legislation added the following clause:

"In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been

provision requiring the Archivist to initiate action through the Attorney General if the head of the agency fails to take timely action. The provision further required the Archivist to report to the appropriate committees of Congress the circumstances of the failure of the head of the agency or the refusal of the Attorney General to initiate action to recover such records.²¹

After NARA became an independent agency, the Archivist established a task force, pursuant to the congressional mandate,

made."

National Archives and Records Administration Act of 1984, Pub. L. No. 98-497, §§ 107, 203(a), (b), 98 Stat. 2280, 2288, 2290, 2294 (1984).

This power has most recently been implicated in the case of Armstrong v. Executive Office of the President, discussed *infra*.

²¹ Pub. L. No. 98-497, § 203(a), (b), 98 Stat. 2280, 2294 (1984). The original H. 3987 contained a provision that would have allowed the Archivist direct authority to litigate. This provision added the following language to sections 2905 and 3106 of title 44 of the United States Code:

AUTHORITY TO LITIGATE

"In any case in which the head of the agency fails to initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist of the United States may, subject to section 518 of title 28 (relating to litigation before the supreme Court), designate attorneys to initiate and appear for and represent the Archivist in such an action; and the Archivist shall report the circumstances of any such failure by the head of the agency to the appropriate committees of the Congress."

NARS requested that this language be deleted from the final version of the House bill, noting that most agencies in the Executive Branch rely upon the Attorney General to undertake litigation on their behalf. NARS believed that this practice promoted unity in the Executive Branch with respect to law enforcement and that it would be unseemly for one member of the Executive Branch to sue another. NARS felt that granting authority to the Archivist to make the final determination as to what is or is not a Federal record would resolve the situation, since the Attorney General could represent the Archivist's position. However, NARS noted that the proposed Section 203 could be helpful if a conflict existed between the Archivist and the Attorney General.

which became known as the Committee on Authorities and Program Alternatives ("CAPA"). In 1989, CAPA published the results of its study and made the following recommendations:

1. NARA should propose a change in 44 U.S.C. § 3302 to specifically authorize the Archivist to issue binding regulations establishing standards for interpreting and applying the definition of records.²²
2. NARA should propose changes in 44 U.S.C. chapters 29 and 31, concerning responsibilities for government-wide records management shared among the Archivist, the Administrator of General Services, and Federal agencies, to reference the proposed authority of the Archivist to issue binding regulations as describe above, and thus oblige the agencies to follow the regulations in all matters pertaining to the definition of records and to records management.
3. NARA should propose a change in 44 U.S.C. § 2906 to specify that all Federal records, even those restricted by law for reasons of national security or other purposes, are subject to inspection by the Archivist in accordance with regulations promulgated by the Archivist.

The CAPA recommendations were incorporated into a draft of the 1989 Paperwork Reduction Act. This legislation passed the House

²² CAPA concluded that the idea of assigning "final authority" to the Archivist of the United States for determining what constitutes a record is both mistaken and infeasible. A position paper prepared by the National Archives agreed with this conclusion, stating, "[T]he better approach is to grant through legislation the authority to issue binding regulations that would provide standards for determining what is a record. . . . while the meager resources of the Archivist could quickly be inundated by [engaging in disputes] throughout the Federal establishment, his staff is capable of producing and selectively monitoring the application of standards for defining records."

Other reasons that have been given to support this policy include:

- 1) Archival theory - The primary reason for the existence of the record is for the use of agency business. Therefore, the agency is in the best position to determine whether or not the record is "appropriate for preservation."
- 2) Appropriate role of NARA - Millions of records status decisions are made by individual employees everyday - it is unreasonable to assume that NARA could police the entire executive branch. It is more reasonable for NARA to provide guidance and assistance to agencies through binding regulations.

in 1990, but died in the Senate for reasons unrelated to the inspection proposal.

The most recent interpretation of the Archivist's powers occurred in the case of Armstrong v. Executive Office of the President.²³ This case was initially filed in 1989 against Ronald Reagan just before his term of office ended to prevent the Reagan administration from erasing electronic communications from various computer systems. The case was later expanded to include electronic materials produced during the Bush administration as well. By a third amended complaint, the President was dropped as a defendant; the current defendants are the EOP, the Office of Administration, the National Security Council, and the White House Communications Agency.

The Plaintiffs in Armstrong contended that the electronic materials identified in the case had to be saved as records in electronic form because paper copies printed out from the electronic material would not contain all of the information found in the electronic version, such as who received the information and when the information was received. The Defendants responded that the computer system was merely a communications system, not a records storage file and the agencies involved required any record material to be created and filed in "hard" or paper copy.

By order dated January 6, 1993, Judge Charles Richie, of the District of Columbia Court of Appeals, ruled that at least some of the information on the communications systems met the definition of record under the FRA and ordered the Defendants to preserve back-up tapes of the electronic materials. Judge Richie also ruled that the Archivist breached his statutory duty to prevent the destruction of federal records by not taking action once the impending unlawful destruction of records in the custody of a Federal agency was brought to his attention.²⁴ This ruling is currently being appealed.

Although Judge Richie felt the Archivist had breached his statutory duty under 44 U.S.C. §2905(a) to prevent the

²³ No. 89-142 (D.D.C. filed Jan. 6, 1993).

²⁴ See 44 U.S.C. § 2905(a). The Armstrong decision stands for the proposition that action or inaction by the Archivist in response to knowledge of a pending destruction or alienation of records by a Federal agency could give third parties standing to challenge the Archivist's actions or lack thereof under the Administrative Procedures Act, 5 U.S.C. 551, et. seq. The question remains unanswered, however, as to what action could be taken by a third party if the Attorney General does not take any action in response to a request from the Archivist.

destruction of federal records, it should be noted that the Archivist had determined prior to the lawsuit that the materials at issue in Armstrong were not federal records. The Archivist's decision not to intercede in the proposed destruction of the electronic materials was consistent with his prior determination that the materials were not records. } ?

ELECTRONIC MEDIA

NARA (and formerly NARS) has long been aware of the proliferation of electronic media and the complicated relationship between new technology and the archival concerns of records creation, management, preservation and disposal. The National Archives has attempted to deal with this issue in a manner that is comprehensive, practical, and flexible enough to respond to advances in technology. The definition of "record," currently found at 44 U.S.C. §3301²⁵ clearly states that machine readable materials can be records and NARS/NARA has consistently structured the agency's actions to reflect this definition. The balance of this discussion focuses on agency efforts to address

²⁵ §3301. Definition of records

As used in this chapter, "records" includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the information value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

Congress did not establish a statutory definition of records until 1939. The 1939 Act Concerning the Disposal of Records, reflecting an early effort to have the National Archives serve as a National Film Archives, contained a definition of "record" that was inadequate on an archival basis. This definition was superseded by the Records Disposal Act of 1943, which as amended (in 1945, 1950, and 1976) is currently found at 44 U.S.C. § 3301, above. In 1976 the Federal Records Management Amendment to the 1950 Act inserted the words "machine readable materials" after "photographs." Federal Records Management Amendments of 1976, Pub. L. No. 94-575, § 4(c)(2), 90 Stat. 2723, 2727 (1976).

electronic media.

NARS, under the General Services Administration, was initially authorized in 1977 by FPMR 101-11.411-6²⁶ to accession machine-readable records into the Archives of the United States. Since then numerous agency directives, memoranda, bulletins, and regulations have been issued to address electronic media in the context of federal records management. A sample of these releases includes:

- GSA Bulletin FPMR B-79, issued in 1978, announced the availability of archival storage for Federal machine-readable records that were judged to be of high current research interest but were of indeterminate long-term or archival value.

- GSA Bulletin FPMR B-127, issued in 1983, covered the disposition of electronic records. The purpose of this Bulletin was to provide guidelines on the applicability of the Federal Records Act and the Federal Property Management Regulations to Federal records creation or maintenance systems using personal computers and electronic information storage or transmission equipment (e.g., electronic filing and electronic mail). The Bulletin noted that the proliferation of personal computers in many Federal agencies and the implementation of sophisticated electronic filing and/or mail systems had created a need for adaptation of traditional records management techniques for the control and disposal of records and information. The Bulletin also informed the heads of all Federal agencies that NARS was prepared to advise any agency that requested help in handling the disposition of electronic records.

- NARA Bulletin 85-2, entitled "Electronic recordkeeping," was issued in 1985 in response to increasing Federal reliance upon electronic office equipment and systems to create, maintain, use, and dispose of records. The purpose of this bulletin was to provide guidelines on how to manage records created, stored, or transmitted using personal computers or other electronic office equipment including word processors and to prevent the unauthorized disposal of Federal records.

Bulletin 85-2 reminded Federal agencies that the method of creation of information has no bearing upon whether the information is record or non-record and that record status is determined by the same criteria for all information, regardless of the medium on which it is created or stored. The Bulletin also stated that ensuring the retention of records stored electronically is not as simple as ensuring the retention of records stored on microform or paper. The Bulletin provided guidelines for records creation practices, indexing electronic

²⁶ 42 Fed. Reg. 57316 (Nov. 2, 1977).

records, retrieval of electronically stored records, retention of records, destruction of electronic records, electronic record standards, judicial use of records, appropriate records storage medium, security, software for electronic systems, equipment configuration, and flexible disk care and handling. Additionally, the Bulletin noted that if the same information is stored on more than one medium (e.g., paper and disk), agencies, in consultation with NARA should schedule the disposition of all copies. This Bulletin was superceded by NARA Bulletin 87-5, which expired January 1, 1989. The issue of electronic recordkeeping is currently addressed by a NARA instructional guide entitled "Managing Electronic Records," discussed *infra*.

- NARA Bulletin 88-8, issued in 1988, clarified NARA policy regarding the use of optical disk technology for the storage of permanent records that are designed for preservation as part of the National Archives of the United States. The Bulletin noted that because of the hardware and software dependence of current optical disk systems and the absence of standards that ensure the portability of data from one system to another, NARA cannot currently accession permanent records stored on optical disks. However, the Bulletin stressed that NARA continues to monitor developments in optical disk technology that may permit a modification of current policy regarding the accessioning of optical disks. This Bulletin was superceded by NARA Bulletin 91-2, issued in 1991.

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first issued earlier
- General Records Schedule 20, entitled "Electronic records," was issued in 1989, and remains in effect. This Schedule applies to disposable electronic records routinely stored on magnetic media by Federal agencies in central data processing facilities. Materials covered by the Schedule include records created by computer operators, programmers, analysts, and systems administrator in order to store and maintain computer files in such facilities; certain master files, including some that are components of data base management systems; and certain files created from master files for specific purposes. Additionally, the Schedule provides authorized disposition schedules.

- General Records Schedule 23, issued in 1988, also remains in effect. This Schedule addresses records common to most offices within agencies. Items covered include: administrative subject files; facilitative records such as suspense files, tracking and control records, calendars, and indexes; and transitory documents; as well as certain types of records created in electronic form on stand-alone or networked micro- and mini-computers. Part of the Schedule is devoted to scheduling the disposal of non-record material that is created on electronic media, such as letters which are produced on word processing equipment and then printed out in hard copy and maintained in organized files.

- "Managing Electronic Records," a booklet in NARA's Instructional Guide Series, was published in 1990. This Guide states that it is essential for agencies to recognize that all components of electronic information including input, output, digital data, and related documentation can be records. The Guide indicates that while NARA appraises information in computer files using the same general standards applied to information in any other medium, some special considerations are appropriate when appraising information in automated information systems. For example, electronic information may have greater research utility than similar information stored on paper or microfilm because it can be manipulated. Consequently, some electronic data appraised as disposable in hard copy could be permanently valuable when maintained as electronic data.

In addition to these agency-issued memoranda, records schedules, and bulletins, NARA regulations, found in the Code of Federal Regulations, also address electronic media. For instance:

- 36 C.F.R. 1228.188. *old GSA cites* (Electronic records. First published as a NARA regulation in 1985,²⁷ this section has been repeatedly revised to ensure that machine-readable records transferred to NARA will be in a standard readable form and will be accompanied with documentation adequate for servicing and interpreting the items in accordance with their preservation as Federal records. This section was last revised in 1992.²⁸

36 C.F.R. part 1234. Electronic Records Management. Published in 1985 under the title "ADP Records Management,"²⁹ this part includes definitions, agency responsibilities, and standards for the creation, use, security, preservation, and disposition of electronic records. This section was last revised in 1990.³⁰

CONCLUSION

For the past 16 years, the Archivist's powers over records management have been a topic of debate and the subject of several legislative efforts. At the same time, the nature of records management has been changing with the advent of computers and electronic communications systems. Recent events, such as the Armstrong case demonstrate the relationship between archival power and electronic media and highlight the need to strengthen

²⁷ 50 Fed. Reg. 26935 (June 28, 1985); 50 Fed. Reg. 27951 (July 9, 1985).

²⁸ 57 Fed. Reg. 22433 (May 28, 1992).

²⁹ See 50 Fed. Reg. 26939 (June 28, 1985).

³⁰ See 55 Fed. Reg. 19218 (May 8, 1990).

the Archivist's powers ensure effective and consistent records management for the federal Government. NARA continues to address these issues as part of its mission of safeguarding the records of the Federal government.

Briefing on the history of the Nixon Presidential Materials

The administration of the Presidential Recordings and Materials Preservation Act is of vital importance both to the historical community and NARA.

NARA's policy for processing of the Nixon materials has evolved over the years based on the unique circumstances surrounding the Nixon situation including legal challenges, seizure of papers and tapes, statutory authorities, and Court rulings.

Stated simply, NARA's responsibility with respect to the Nixon materials is to open these materials to the public as quickly as possible, giving priority to the processing of Watergate files, while at the same time protecting the constitutional rights of Mr. Nixon, his associates, and other interested parties. This dual and sometimes contradictory mission, as required by the statutory authorities, accounts for most of the frustration of the parties involved with Nixon processing. Staff archivists complain that the legal requirements of the Nixon regulations often conflict with professional archival practices. Researchers are frustrated with what they perceive to be the slow progress of our openings as well as with our processing priorities. At the same time, Mr. Nixon's attorneys repeatedly express the view that NARA has failed to adequately protect Mr. Nixon's constitutional rights.

The current Archives' policy has been carefully developed over the past nineteen years in what could often be characterized as an adversarial relationship between NARA and Mr. Nixon and his attorneys. This adversarial relationship can be divided into three phases:

1. litigation over the constitutionality of the act;
2. litigation over the adequacy of NARA's implementing regulations; and
3. disagreements with Nixon's agents, along with threats of litigation, over NARA's application of our regulations in the review process.

Shortly after President Nixon resigned from office, he signed a depository agreement for control of his papers with the Administrator of General Services, Arthur Sampson. This agreement became known as the Nixon-Sampson agreement and allowed former President Nixon to destroy his tapes. The Presidential Recordings and Materials Preservation Act

(PRMPA) passed by Congress in December 1974 rendered the Nixon-Sampson agreement null and void. The Act authorized the government to take custody of the Presidential historical materials and tape recordings of former President Nixon and promulgate regulations that would provide for an orderly processing of materials.

The FBI seized all materials of White House staffers from the Old Executive Office building. No piece of paper was allowed to leave. No separation was allowed for personal or political papers. The PRMPA established specific handling for the Nixon Presidential materials because of the importance of documenting the abuses of governmental power and ensuring a full historical record of the Nixon presidency.

Previous presidents had donated their papers to the federal government with a donor's deed of gift which stated access restrictions. Because these papers were seized, Congress recognized that personal and private papers would be taken and mandated that the Archives incorporate statutory protections in its regulations to protect this material.

In framing the regulations, the Archivist is required to take into account seven factors which include: providing the public with the full truth about Watergate at the earliest reasonable date; protecting legally or constitutionally based assertions of privilege and privacy rights; and returning to Richard Nixon, or his heirs, any materials not related to Watergate or documenting his constitutional and statutory role as President.

As a result of the passage of the Presidential Recordings and Materials Preservation Act, former President Nixon brought suit against the federal government to challenge the constitutionality of the statute. President Nixon alleged that the PRMPA was unconstitutional on the grounds that it: (1) infringed the powers reserved to the Executive Branch; (2) infringed upon executive privilege; (3) infringed President Nixon's constitutional rights of privacy, free speech, and free association; (4) was an unconstitutional bill of attainder.

On June 28, 1977, the Supreme Court upheld the constitutionality of the Presidential Recordings and Materials Preservation Act. However, in sustaining the Act's constitutionality, the Supreme Court, as had the United States District Court in an earlier decision on the same case, specifically limited its decision to the constitutionality of the Act on its face. Because no public access regulations had been implemented at the time the

Court ruled on the Act's constitutionality, the Court reserved judgment on the issue of whether the Act was constitutional as applied. Emphasizing that the regulations would have to be sensitive to the claims raised by President Nixon, the Court stated there could be future rulings on the implementation of the Act.

While this ruling was a victory for those charged with implementing the Act, it placed several hurdles in the way of immediate access to the records. The Court stated that it believed the Nixon Act could be implemented in a constitutional manner.

The specific cautionary instructions of the Court included the following points:

- * The general notice of openings must provide Mr. Nixon and others ample opportunity to protect their constitutional rights.
- * An individual's rights to challenge archival decisions to open documents would be meaningful only if they are provided access to the documents before released.
- * The regulations must provide Mr. Nixon protection from unreasonable search and seizure protected by the Fourth Amendment. The District Court found this to be the most troublesome challenge because the historical practice of most Presidents had been to exclude or to prohibit review of private materials. The District Court concluded that the manner in which the materials were processed would need to protect Mr. Nixon's privacy interest and that the government would return purely private papers and recordings.
- * The definition of personal privacy should include the privacy in political association protected by the First Amendment. The Court felt that this right would be protected in implementation by closing these documents during the archival review and guaranteeing Mr. Nixon full judicial review before any public access is permitted.
- * The regulations must provide protection for material covered by "Executive Confidentiality" (this term was left undefined by the court). To do this archivists would need to review carefully for the deliberative process in making Presidential

decisions.

Throughout the Courts' rulings it was emphasized that disagreements between Mr. Nixon and the government on archival processing could be subject to judicial review.

To fulfill the requirements of the PRMPA, the National Archives worked on a series of regulations between 1975 and 1977. Two sets were disapproved by Congress, the third set was withdrawn by the Archives at the request of the Department of Justice, in order to reconsider the regulations in light of the Supreme Court's decision in Nixon v. Administrator. The fourth set became effective on December 26, 1977, but was legally challenged when Mr. Nixon brought suit against GSA claiming that this new set of regulations still did not protect his constitutional rights.

In exchange for certain revisions in the regulations, former President Nixon and other parties involved reached a settlement known as the "Negotiated Agreement." As part of this agreement, a fifth set of regulations was agreed to by all parties. The fifth set of regulations revised the definition of "private or personal materials." The new definition, which all parties in the suit agreed to, limited retainable political materials to those "materials relating to the political activities of former President Nixon or members of his staff, but only when those activities directly relate to or have a direct effect upon the carrying out of constitutional or statutory duties." (36 CFR 1275.16) The fifth set of regulations were later ruled unconstitutional on the grounds that Congress exercised the one-House legislative veto provision.

The sixth and current set of regulations implemented on February 28, 1986, did not change the definitions for "Presidential historical materials, "private and personal", and "general historical significance".

NARA completed processing on the "Special Files" and proposed opening these files to the public in 1987. Mr. Nixon responded by raising some 15,000 objections on the proposed opening. He maintained that these items either should be closed for invasion of privacy, or returned as personal or political. The Archives agreed to close, for the time being, all documents identified in Mr. Nixon's objections, deferring to a later point the review of these items for returnability and access, thereby allowing the opening of the remaining million pages of material.

In cases of objections dealing with return of material, the pertinent provisions of the "Nixon Regulations" direct the

Archivist of the United States to transmit the contested items to the Presidential Materials Review Board for their review and determinations as to whether these documents should be returned or retained (36 CFR 1275.44 (d)).

Beginning in May 1988, the five-member Board held a series of meetings to review documents and consider President Nixon's claims on a case by case basis. Because there are 15,000 items being contested and the review of these documents is so time-consuming, the Board developed "Review Guidelines for the Nixon Contested Documents" which provides the review framework that is being used by a team of review archivists in making recommendations to the Presidential Materials Review Board on the contested documents.

In addition to the opening of "Special Files", the Archives has made five other openings of textual materials from 1986 to the present consisting of approximately 3 million pages. Mr. Nixon has not objected to the release of any of this material.

Review of the Tapes

The Archives assumed physical control of 4,000 hours of Nixon White House tapes in August 1977. Processing has proceeded in several different phases. The first priority was preservation of this collection which included rewinding the tapes and making duplicates.

The second phase of processing involved establishing intellectual control over the contents of these tapes. Initially making transcripts for these tapes was considered, but this idea was rejected because of the staff time involved (approximately 100 staff hours were spent per one hour of conversation), and because the poor quality of the tapes precluded the guarantee of accuracy for the transcripts. Instead, the Archives created a 27,000-page tape log which contains an entry for each dictation by the former President. Various items of information comprise each entry, including major subject and related subtopics addressed, the length of dictation, and a tentative access determination.

The tapes are an extremely complex body of materials to review. Because these recordings were made secretly, most of the people taking part in these conversations were unaware that their remarks were being recorded. This lack of knowledge produced a more frank and relaxed exchange than would normally occur in textual records. Presidential tapes are the most private of all records, and 18-20 years is not an unreasonably long time in release of this material in

comparison with the tape collections held in other Presidential Libraries.

In accordance with the statutory mandate to open Watergate materials, the first group of tapes that were processed were those that were submitted to the Watergate Special Prosecution Force for its investigation. These tapes were processed in conjunction with the transcripts that had been made by officials involved in the Watergate investigations.

Because of the sensitive and unprecedented nature of this material, and the potential for litigation, Clarence Lyons, the Acting Director of the Nixon Presidential Materials Project, asked the Archivist to appoint a Senior Archival Panel to undertake a final review on the Nixon Watergate-related tapes (36 CFR 1275.46). The purpose of the Senior Archival Panel's final review was to ensure that the form in which the Archives was proposing release of this material complied with all legal requirements and that our review for privacy interests was consistent with established practices in other Presidential Libraries.

Mr. Nixon did not formally object to the release of any of the portions of the Watergate-related tapes or transcripts proposed for release, because these tapes were a unique collection that had been given to the Watergate Special Prosecutor. However, a letter sent to the Archivist by Mr. Nixon's representative, clearly specified that Mr. Nixon did feel that his privacy had been invaded by this release and that he will continue to monitor the processing of this collection, and was willing to litigate over this issue.

Future tape releases will require the same exacting review process used for the Watergate-tape release, since the remaining tapes have no transcripts and do include personal and political portions. The goal of the Archives is to do a careful review that will balance the needs of public access against our legal obligations.

Processing this material has been a long, frustrating and time-consuming job for the Archives. In reviewing the Nixon materials there are many considerations that we must balance. These include the public's right to know the full truth about Watergate, Mr. Nixon's and other interested parties' constitutional rights, and the potential for litigation.

The Nixon administration created an unparalleled record of the American Presidency. No other Presidency committed to paper and tape with the degree of completeness, frankness, and accuracy that exists for the Nixon years. This record

is further distinguished in its uniqueness from other modern Presidential collections by the fact that this material was seized and none of the creators could separate their personal materials from the official record. The Archives only has the right to keep materials that document Watergate and the official Presidency. These are the issues that the Archives is continually faced with in processing the Nixon materials.

The Archives has pursued a policy over the years that has carefully tried to weigh the many different concerns raised by this material. It is our hope that the Archives' policy has fairly served the interests of historians by making sensitive files available, while at the sametime ensuring that we keep as complete a record as possible for posterity of the Nixon Presidency.

Pending Litigation

1. Two pending suits, Kutler v. Wilson and Kutler and Public Citizen v. Wilson, and Nixon, Defendant-intervenor, involve the Nixon Presidential materials. Kutler v. Wilson was filed under the Freedom of Information Act and seeks access to a 27,000-page tape log and other finding aids created by NARA. In the second case, joined by the Public Citizen Litigation Group and brought under the Administration Procedures Act, NARA is charged with unreasonably delaying release of the Nixon tapes.
2. U.S. Circuit Court of Appeals for the D.C. Circuit recently ruled in Nixon v. U.S. that Mr. Nixon is due compensation for his papers and recordings because the PRMPA constitutes a taking of private property without compensation. The case was remanded to the district court to determine the amount of compensation Mr. Nixon is due. A decision on whether to further appeal is currently being considered the Department of Justice.

Comment on Hersh Article

There are many inaccuracies in the Hersh article, the foremost of which is the characterization of the Archives' reason for a re-review of the Nixon White House tapes. The current plans of the National Archives' for releasing the remaining 4,000 hours of Nixon tapes are (1) final review for public release of the remaining "abuse of power" segments; (2) final review for public release in a chronological sequence of the remaining 4,000 hours. The estimated time to complete the National Archives' final review for "abuse of power" segments is three years. This final review will incorporate the guidance of the

Senior Archival Panel and the Presidential Materials Review Board.

In June 1991, the Archives opened the Nixon tapes provided to the Watergate Special Prosecution Force. The Senior Archival Panel was asked to do a final review of this material before opening because of the unprecedented nature of this opening and to provide future processing guidance. Future tapes releases will undergo a final review to ensure that the tapes are opened in compliance with the Presidential Recordings and Materials Preservation Act, the Negotiated Agreement, the Nixon Regulations, and Court rulings in the Nixon cases. The purpose of the final review is to balance the needs of public access with our legal obligations.

If, as Mr. Hersh alleges in his article, he is revealing material from non-released Nixon White House tapes, then a blatant violation of the professional creed of the archivist, as well as the provisions of the PRMPA and the regulations, not to reveal unavailable material has occurred. This unprofessional behavior could easily stall any future releases of this material and result in further litigation.

It is ironic that the Archives' policy has been characterized as a political one. In actuality NARA's policy has evolved over the years based on the unique circumstances surrounding the Nixon situation including legal challenges, seizure of the papers and tapes, statutory authorities, and Court rulings.

To: The Record
From: thp
Date: March 10, 1993
Re: Nixon tapes

This afternoon Gary Brooks, General Counsel, and John Fawcett, Assistant Archivist for Presidential Libraries, came to see me. While the purpose of the meeting was to show me a letter that Brooks planned to send to Stan Mortenson, Richard Nixon's attorney, the meeting turned out to be a partial briefing on the preservation status of the Nixon tapes.

There are about 990 tapes, containing nearly 4000 hours of conversations. The stages of handling, as Fawcett described it, are as follows:

1. Shortly after obtaining possession of the tapes in the late 1970s, the Nixon Project produced a security copy. This was a direct copy, not audio-enhanced.
2. The original tapes were retired to a vault at the Nixon project.
3. From the security copy a working copy was made. Fawcett says that the plan was to produce two copies at the same time, using two pieces of equipment. The Project staff, however, apparently chose to make only one copy, preferring to quickly get one working copy made. (In other words, rather than tying up two machines for one tape, two machines could be used for two tapes, effectively doubling the speed by which a complete set of working copies could be available.)
4. The security copy is stored at the project.
5. The working copy is used to produce a tape log. Archival reviewers then determine which portions of the tape are Watergate-related ("abuse of power"), which are closed for national security reasons, which have general historical information that should be retained but restricted from public access, which portions should be opened, and which are portions that are Nixon private or personal information.
6. Using the determinations made categorizing the information, the working copy is cut and portions rearranged and spliced so that reels of tape are wholly "open" (including Watergate), "national security," "restricted," or "personal."
7. In 1985 the security copy is erased and the tape reused.
8. In late winter 1992 the Nixon Project determines that the spliced reels are deteriorating. The binder is breaking down and the oxide is clogging the player heads to such an extent that they will jam after five minutes of playing time.

9. An outside company (I do not remember the name) advises the Project that flaking oxide may be solved by "baking" the tapes.

10. The Project decided that instead of the "baking" option it would make new working copies from the originals, one copy analog and one copy digital. At present one production system is running and another one is being set up. Approximately one-fourth of the tapes have been copied (about 1000 hours). Because all archival audio copying must be at "real" time, this leaves approximately 3000 working hours of copying to go.

11. Once a digital copy is produced, an archivist reviews it against the tape log. The archivist determines which segments of the tape relate to Watergate, and those segments are digitally duplicated onto a new tape. No splicing is required.

12. The Project estimates that approximately 280 hours of the tapes are related to Watergate. At present only 3.5 hours are ready for release (tapes from June 1972) and another .5 to 1.5 hours (May 1972) are nearly ready.

Summary (all numbers approximate):

- 4000 hours of tape

- 1000 hours duplicated in digital and analog

- 280 hours of Watergate-related conversations

- 5 hours ready for release in May



U.S. Department of Justice
Office of Legislative Affairs

Draft

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable John Glenn
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Your joint letter dated February 16, 1993, to the Department of Justice attorneys handling the case of Scott Armstrong, et al. v. Executive Office of the President, et al., No. 89-0142 (D.D.C.), appeal docketed, No. 93-5002 (D.C. Cir.), addressed certain recent actions of the Archivist of the United States Don Wilson. Specifically, the letter raised questions about the agreements which the Archivist entered into with former Presidents George Bush and Ronald Reagan to retain custody of certain computer backup tapes and other electronic materials created during the Bush and Reagan Administrations.

As you may be aware, discovery is currently ongoing in the Armstrong suit regarding the government's compliance with the district court's orders of January 6 and 11, 1993, as stayed in part by an order of the U.S. Court of Appeals for the District of Columbia dated January 15, 1993. While the Justice Department's position on these matters is best left to the Department's public filings on behalf of the Archivist in connection with the ongoing litigation, I believe it is important to set the record straight on several issues you have raised.

As we informed the district court, the agreements which the Archivist signed were in furtherance of its order that the Archivist "take all necessary steps to preserve, without erasure, all electronic Federal Records generated at the defendant Agencies." Order of January 11, 1993. In compliance with that order, and as announced in a press release of January 28, 1993, the Archivist took steps to "protect and preserve the materials until the legal issues involving their status are resolved." In taking custody of the electronic materials at issue, the National Archives and Records Administration acted with the knowledge that plaintiffs in the Armstrong litigation had already advised the

Court that they had no objection to such a transfer to the Archivist (letter to the Court dated December 28, 1992, later incorporated by the Court into the public record).

As you may also be aware, the government has appealed the district court's orders of January 6 and 11, 1993, and has sought to expedite that appeal. A central issue on appeal involves whether defendants are obligated to treat at least a portion of the electronic materials currently held under the Archivist's custody as "federal records" within the meaning of the Federal Records Act, 44 U.S.C. 3301. Until such time as these issues are finally decided, as well as pending the conclusion of various independent investigations, the agreements the Archivist entered into were intended to preserve the legal "status quo" existing under the district court's injunctive orders, and ensure that all interested parties' rights to future access to the electronic materials at issue are preserved. Any concerns plaintiffs have with specific language in the agreements vis-a-vis the Federal Records Act will be addressed in the context of the ongoing litigation at an appropriate time.

The further issues you raise regarding the relationship of the agreements to the Presidential Records Act are beyond the scope of the Armstrong litigation, by virtue of the Court of Appeals decision in the case. Under that ruling, the President's record-keeping practices and decisions are not within the scope of judicial review. Armstrong v. Bush, 924 F.2d 282, 291 (D.C. Cir. 1991). This Department does not, however, view any provision of the agreements as in conflict with the terms of the Presidential Records Act. Consistent with the position which the government has taken with respect to the Federal Records Act in the Armstrong litigation, the presidential information contained in electronic form was not deemed by former Presidents Bush and Reagan to consist of "presidential records" within the scope of the Presidential Records Act. Rather, the presidential-level information in electronic form constitutes either personal records created by individuals in a unit of the Executive Office of the President whose function is to advise and assist the President, or nonrecord material created by such individuals, including extra copies of presidential records otherwise preserved in paper form under existing White House guidance.

Your final point concerns a possible conflict of interest, as well as an alleged appearance of a conflict of interest, in the actions of the Archivist. Apart from referring you to the press release of the Archivist dated February 17, 1993, in which the Archivist directly responds to your concerns, I will defer

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making a further response pending the outcome of any investigations that may be conducted by the Office of Government Ethics and the Public Integrity Section of the Criminal Division.

Sincerely,

M. Faith Burton
Acting Assistant Attorney General

EXHIBIT

PENGAD-Beyonne, N. J.

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SERIOUS MANAGEMENT PROBLEMS AT
THE NATIONAL ARCHIVES AND
RECORDS ADMINISTRATION

REPORT

BY THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE



OCTOBER 1992

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(iii)

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(ii)

EXECUTIVE SUMMARY

The Senate Committee on Governmental Affairs undertook a year long review of management practices at the National Archives and Records Administration (National Archives). The National Archives is an independent agency. As set forth in 44 U.S.C. Section 2103(a): "The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist. The Archivist may be removed from office by the President. The President shall communicate the reasons for any such removal to each House of the Congress."

The Committee's review was an exercise of its oversight responsibilities for the National Archives, as well as for the Inspector General Act and the Inspector General Amendments Act of 1988. In the course of carrying out its oversight activities, the Committee became aware of allegations concerning the actions of certain high-level officials. The Committee specifically sought to determine whether agency officials had acted in compliance with the law, regulations, and ethical standards in several specific areas. These included agency administration, procurement management, the appointment of the Inspector General, and the conduct of the Inspector General. The investigation of these issues is the content of this report.

The Committee's investigation included inspecting thousands of pages of documents, taking depositions under oath from eleven National Archives employees and four contractor employees, and interviewing numerous other witnesses. The Committee was also assisted in its investigation by the Federal Bureau of Investigation, the Office of Special Counsel, the Office of Government Ethics, and the Office of Personnel Management.

The myriad issues which came to the Committee's attention during its oversight were narrowed to certain specific subjects because the Committee was engaged in an overall review of the implementation of the 1988 amendments to the Inspector General Act.¹ Under these amendments, the law was extended to 33 "designated Federal entities" including the National Archives. The Inspectors General for the "designated Federal entities," however, are appointed by the agency heads rather than by the President subject to the advice and consent of the Senate.

The Committee was specifically interested in determining:

- (1) The degree of care and diligence exercised by an agency head in the selection of an Inspector General when appointment by the President and confirmation by the Senate are not required.

- (2) Whether preferences are given to selecting current or former agency officials as Inspector General.

- (3) Whether special problems of conduct, independence, objectivity, or recusal interfere with the performance of responsibilities by Inspectors General who are former agency officials.

The Committee determined that the Inspector General of the National Archives fit the above profile because the National Archives is a "designated Federal entity," its Inspector General was appointed by the Archivist of the United States, and the Inspector General had a 9-year employment history at the National Archives prior to his appointment by the Archivist.

As a result of its investigation, the Committee finds that the above three questions can be answered as follows. First, Archivist Don Wilson, aided chiefly by Deputy Archivist Claudine Weiher, failed to exercise care and diligence in the agency head's statutory responsibility to select the Inspector General. Second, Archivist Wilson, aided chiefly by Deputy Archivist Weiher and Assistant Archivist for Administration James Megronigle, gave undue preference to Lawrence Oberg, a former agency official, over other well-qualified applicants seeking to become Inspector General. Third, Inspector General Lawrence Oberg's performance has been characterized by special problems of conduct, independence, objectivity, apparent conflict of interest, and statutory compliance. These problems have interfered with the work of the National Archives Office of the Inspector General.

The Committee also conducted an investigation of procurement activities at the National Archives involving the award of a multi-million dollar security services contract. This procurement had been investigated in 1988-1989 by the Federal Bureau of Investigation (FBI), which had found no criminal fraud. This matter also involved the National Archives management and Inspector General Lawrence Oberg. Mr. Oberg, together with Deputy Archivist Weiher and Assistant Archivist Megronigle, were integrally involved in the controversial procurement award. The Committee investigation, based on additional information, documents, and sworn testimony, determined that these three National Archives officials together disclosed valuable inside information in exclusive presolicitation meetings and discussions with the successful contractor. These activities raise serious questions about whether the National Archives officials involved complied with the laws, regulations, and standards of conduct related to government contracting.²

THE OMISSION AND DESTRUCTION OF NATIONAL ARCHIVES RECORDS IN RESPONSE TO COMMITTEE REQUEST

At the outset of the Committee's investigation, it requested that Archivist Don Wilson document the history of his selection of Lawrence Oberg as the agency's first Inspector General in April 1989. The Committee's request specifically identified a broad range of records and information. The Archivist delegated responsibility to coordinate his response to the Committee to Deputy Archivist Claudine Weiher. The resulting response was incomplete, and it delayed and interfered with the Committee's ability to fully inves-

tigate and review facts and records relevant to the selection and hiring of the Inspector General.

Deputy Archivist Weiher alone determined that a single folder within the Office of Personnel's files on the selection of the Inspector General would satisfy the Committee's request. This decision was made without providing the Office of Personnel with a copy of the Committee's specific request, and without determining the scope of documents in the possession of that Office which might be responsive to the Committee's request. Additional files and relevant documents were also withheld from the Committee, others were shredded, others disappeared.

On the day Committee investigators visited the Office of Personnel to review National Archives records, Personnel Director Wilma Kriviski and her deputy Steven Rappold intentionally shredded a document from the National Archives personnel files. A photocopy of the same document also disappeared. The document reflected the efforts of National Archives management to amplify the credentials of the individual selected as Inspector General.

These actions raise serious questions about compliance by these National Archives officials with the law prohibiting obstruction of investigations by a congressional committee.³

INAPPROPRIATE ACTIVITY BY THE INSPECTOR GENERAL OF THE NATIONAL ARCHIVES

The Committee examined the ability of the Inspector General, Lawrence Oberg, to adhere to the highest ethical and professional standards expected of Inspectors General. These include: Independence from the agency; objectivity; and integrity of professional conduct. The Committee found extensive evidence that Lawrence Oberg has demonstrated lapses in adhering to these standards.

The Inspector General's failure to understand the basic needs of independence and confidentiality for an Office of Inspector General has been reflected in his handling of operational needs, appearance of conflict of interest, personal conduct, reporting to agency management other than the agency head, and involvement in agency program operations. Despite the statutory requirements for independence and confidentiality in the establishment of the Office of Inspector General, including the provision of necessary office equipment for such purposes therein, Mr. Oberg ignored certain fundamental needs of the Office during the first 2 years in his role as Inspector General. Mr. Oberg did not ensure that the Office of Inspector General had a separate mail stop from the agency, a confidential communications or whistle-blowers "hot-line," or the use of legal services other than the agency's own General Counsel. He only attended to these concerns after they were brought to his attention by the Committee in April 1991.

The Committee also found that Inspector General Oberg has demonstrated extreme difficulty in separating himself from his former subordinate role to agency officials, particularly Deputy Archivist Weiher and Assistant Archivist for Administration Megronigle. Mr. Oberg has involved these National Archives officials and others in the work of the Office of Inspector General. This has included taking direction from, referring cases entailing con-

fidential information about employees to, and performing agency functions in concert with these and other National Archives officials. Such conduct would conflict directly with the statutory bar against an Inspector General reporting to or being subject to the supervision of any other officer or employee of the agency except the agency head.⁴

Second, Mr. Oberg's own conduct has involved actions which the Inspector General, as the agency "watchdog," is responsible for preventing, and must never personally commit. In particular, Mr. Oberg was found to have kept a Smith and Wesson revolver belonging to the National Archives in his personal possession for 8 years. Mr. Oberg retained possession of the gun in his office safe for more than 2 years after becoming the agency Inspector General, and he returned it only after Committee investigators and the General Accounting Office discovered the gun in his possession. [See Appendix 1] In addition, Mr. Oberg was also found to have utilized his secretary for a large amount of personal business. This raises questions about compliance with laws governing possession of a firearm, and the National Archives' own Standards of Conduct concerning removal and use of agency property.

The Committee also found that Inspector General Oberg demonstrated a lack of objectivity and judgment by failing to recuse himself from cases in which an apparent conflict of interest existed because of his prior 9-year employment at the National Archives. This action interfered with the thoroughness and outcome of Office of Inspector General investigations. Although he properly recused himself from two major procurement fraud investigations in which his role as an agency procurement official was investigated by the FBI, he failed to recuse himself from a number of additional cases. He ignored communications from the Office of Special Counsel that his referral of such cases was inappropriate [See Appendix 2], closed such cases on his own without further analysis by other Office of Inspector General staff, and referred some cases to National Archives management. More disturbing was evidence that the Inspector General collected and disclosed information for agency officials for use in defending the agency against discrimination complaints and legal proceeding brought by an employee. Such conduct by the Inspector General raises serious questions about his compliance with the prohibitions by the Inspector General Act against reporting to or taking supervision from agency officials other than the agency head,⁵ and the bar against breaching the confidentiality of the identity of an employee who has sought the assistance of the Office of Inspector General.⁶

Last, and most disturbing, the Committee determined that Lawrence Oberg's conduct raises serious questions about loss of impartiality and his compliance with the statutory bar against Inspectors General assuming agency program operating responsibilities.⁷ Specifically, Lawrence Oberg, while serving as Inspector General, participated in, supervised, and acted as an authorizing agency official for the transfer of archival materials in California into the Ronald Reagan Presidential Library. [See Appendix 3]

SELECTION OF THE INSPECTOR GENERAL OF THE NATIONAL ARCHIVES

The Committee sought to determine the degree of care and diligence exercised by the Archivist of the United States in his 1989 selection of the National Archives' first Inspector General. The Committee was interested in whether the selection process ensured careful review and close scrutiny of candidates since the law gives authority for selection to the Archivist rather than the President. The Committee also questioned whether the Archivist's preference for a candidate who had been serving as an agency official was, in this case, commensurate with the demands for the highest standards of integrity, independence, and objectivity.

Archivist Wilson failed to exercise care and diligence in fulfilling his responsibilities under the Inspector General Act (as amended) in the selection of Lawrence Oberg as Inspector General. The Archivist delegated his sole authority to select and appoint the Inspector General to the Deputy Archivist. [See Appendix 4]

Deputy Archivist Weiher principally relied on the assistance of the Assistant Archivist for Administration, who personally recommended Lawrence Oberg above all other applications. The Assistant Archivist for Administration is also responsible for completing a false and misleading supervisory appraisal of Mr. Oberg which inflated Mr. Oberg's record of investigative and auditing experience. The appraisal was a required element of Mr. Oberg's application for the position. [See Appendix 5]

The selection process was abbreviated, superficial, and isolated. Lawrence Oberg was the only candidate of 12 eligible for referral to the Archivist who was interviewed. Archivist Wilson failed to review or scrutinize Lawrence Oberg's qualifications to any degree, and was deprived of information well known to other top officials at the National Archives about the candidate. The Archivist failed to explore in depth Lawrence Oberg's involvement in a controversial procurement award which was then under investigation by the Federal Bureau of Investigation. The investigation was ignored despite an earlier meeting between the Archivist and the FBI about the investigation, and the fact that the FBI was interviewing numerous top National Archives officials throughout the Inspector General selection period. In addition, the Archivist made no inquiries to the Office of Personnel, which screened and reviewed the applicants for basic qualifications, and he made his selection of Lawrence Oberg while ignoring the existence of at least seven Equal Employment Opportunity complaints against Mr. Oberg at the time he applied for the position of Inspector General. [See Appendix 6]

THE VANCE INTERNATIONAL, INC. CONTRACT FOR SECURITY SERVICES

The Committee investigated the award of a security services contract in 1987 by the National Archives to Vance International, Inc. (Vance). The contract provided for a uniformed security guard force at the National Archives for a 3-year period, at a total cost of \$3,806,953.20. The Committee examined whether the contract was awarded in accordance with requirements of the Competition in

Contracting Act, Federal Acquisition Regulations, and the Code of Ethics for employees of the National Archives.

The National Archives officials who were the subject of the Committee's inquiry include: Deputy Archivist Claudine Weiher; Assistant Archivist for Administration James Megronigle; and former Director of Administrative Services Lawrence Oberg. At the time of the 1987 contract award in question, Ms. Weiher and Mr. Megronigle both had the title of "Acting."

The Committee found that sensitive bid and other inside information was disclosed on an exclusive basis to a single successful contractor during presolicitation discussions and meetings held at the direction of Deputy Archivist Weiher and Assistant Archivist Megronigle, and whose participants included Ms. Weiher, Mr. Megronigle, and Mr. Oberg, and contractor representatives. The information disclosed at the meetings revealed the motivation for and timing of termination of the existing contractor, the schedule and bid process for the new request for proposals, and technical details and other criteria which were determinative in the contract award. These actions raise serious questions about compliance with Federal laws, regulations, and standards of conduct relating to government contracting. [See Appendices 7,8]

It is important to emphasize that the Committee found no reason to question the conduct of representatives from Vance International Inc. Vance was new to the business and process of government procurement. It entered the bidding on the National Archives security services contract only after National Archives officials invited the company to presolicitation meetings and placed them on the invitation list of four contractors to bid on the contract. Vance had no knowledge, or reason to believe that it was participating in exclusive meetings and discussions.

Certain activities related to the procurement award to Vance were part of a 1989 FBI probe. Prosecution was declined in early 1990 "due to a lack of evidence to support a criminal prosecution against the captioned subjects." [See Appendix 9] The FBI stated in its closing memorandum that Lawrence Oberg and James Megronigle denied "telling VANCE INTERNATIONAL officials of their intentions to hire another security company. Although the investigation found evidence to the contrary, OBERG denied that he provided VANCE INTERNATIONAL officials with information which would be useful in preparing the VANCE INTERNATIONAL'S bid."

This case was also referred to the President's Council on Integrity and Efficiency (PCIE) for review of Inspector General Lawrence Oberg by its Allegations Review Subcommittee. However, the Committee learned during its investigation, as well as through its oversight of the PCIE and the latter Subcommittee in 1991 and 1992, that in this case, the Subcommittee chairman, an FBI official, declined to review or investigate the case. Instead, the chairman relied exclusively on the FBI's own declination for criminal prosecution without interviewing the FBI agent who handled the case and without exploring the discrepancies in testimony highlighted in the agent's closing memorandum. This was wrong. The Subcommittee relied on standards of criminal law, while its actual function is to investigate and prevent abuses of integrity and inde-

pendence by Inspectors General. This allows for a broader analysis of all relevant facts in a case. Therefore, no review of Inspector General Lawrence Oberg was conducted by the PCIE. The Committee's own investigation has, in important respects, gone beyond the FBI inquiry and is based on additional information, documents, records, and sworn statements. The Committee's report, therefore, should be utilized in any future review of the National Archives officials, and their conduct, as recommended by the Committee.

RECOMMENDATIONS

1. The Archivist of the United States should act without delay to review the conduct of Inspector General Lawrence Oberg with regard to, but not limited to, the activities detailed in this report and concerning his compliance with: the Inspector General Act, as amended (5 U.S.C. Appendix 3, Section 1 et seq); 18 U.S.C. Section 1001; 6 D.C. Code Section 2311; 41 C.F.R. Sections 105-735.201, 202, 207; and other Federal regulations and standards of conduct. The Archivist should review the Inspector General's activities giving special attention to his:

(a) Reporting to, supervision by, and taking assignments from agency officials other than the agency head;

(b) Mishandling of complaints and cases filed with the Office of Inspector General including his: failure to recuse himself from cases involving an apparent conflict of interest; repeated inappropriate referral of such cases to the Office of Special Counsel; closing such cases himself; referring such cases to agency management;

(c) Providing confidential information and identities of employees who filed complaints with the Office of Inspector General to agency management;

(d) Engaging in agency program operations;

(e) False statements made under oath concerning his involvement in agency program operations;

(f) Personal possession of National Archives property;

(g) Personal possession of an unregistered firearm;

(h) Use of his office and staff for personal business; and

(i) Involvement in and disclosure of valuable inside information during the 1987 procurement award to Vance International, Inc.

2. The Archivist of the United States should act without delay to review the conduct of other agency officials identified in this report, with regard to, but not limited to, the activities detailed in this report. This includes the actions of agency officials involving document destruction, and interference with and delay of the Committee's investigation as detailed in Part One; the selection and management of the Inspector General as detailed in Part Two and Part Three; and involvement in the procurement action detailed in Part Four.

3. The President of the United States should undertake a review of actions of the Archivist of the United States in connection with the activities detailed in this report, including but not limited to questions concerning compliance with the Inspector General Act (as amended) and the exercise of administrative and management responsibilities involving:

(a) The selection of the Inspector General;

(b) The conduct of agency officials, including the creation of a false and misleading supervisory appraisal for use in the selection of the Inspector General;

(c) The management and supervision of the Inspector General by agency officials other than the agency head;

(d) The conduct of the Inspector General, including compliance with the Inspector General Act (as amended);

(e) The interference with a congressional investigation, including the destruction of documents and the possible obstruction of Congress by Office of Personnel officials;

(f) The presolicitation disclosure of inside information during contract proceedings by National Archives officials; and

(g) The absence of administrative or disciplinary action against employees for actions raising questions about compliance with laws, regulations, or standards of conduct.

4. The President's Council on Integrity and Efficiency should act without delay to investigate the conduct of National Archives Inspector General Lawrence Oberg regarding the activities detailed in this report, including, but not limited to questions about Mr. Oberg's compliance with the Inspector General Act (as amended), other laws, and official standards of conduct concerning:

(a) Reporting to, supervision by, and taking assignments from agency officials other than the agency head;

(b) Mishandling of complaints and cases filed with the Office of Inspector General including his: failure to recuse himself from cases involving an apparent conflict of interest; repeated inappropriate referral of such cases to the Office of Special Counsel; closing such cases himself; referring such cases to agency management;

(c) Providing confidential information and identities of employees who filed complaints with the Office of Inspector General to agency management;

(d) Engaging in agency program operations;

(e) Veracity of statements made under oath concerning his involvement in agency program operations;

(f) Personal possession of National Archives property;

(g) Personal possession of an unregistered firearm;

(h) Use of his office and staff for personal business; and

(i) Involvement in and disclosure of valuable inside information during the 1987 procurement award to Vance International, Inc.

5. The President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency should act expeditiously to adopt standards for best practices such as those included in the "Inspectors General In Designated Federal Entities: Key Statutory Provisions And Implementing Guidance."

PART ONE

THE OMISSION AND DESTRUCTION OF NATIONAL ARCHIVES RECORDS IN RESPONSE TO COMMITTEE REQUEST

On July 3, 1991, the Committee requested that Archivist Don Wilson provide it with documents related to the selection and hiring of Inspector General Lawrence Oberg. The Committee requested that the Archivist provide:

"Copies of the SF Form 171 submitted by Mr. Oberg when he applied for the position of Inspector General. Copies of all SF Form 171's submitted by other applicants for the position.

"Copies of all written documents, memoranda, notes, or other records pertaining to your selection, and recommendations by other NARA officials, regarding your selection of Mr. Oberg as the NARA Inspector General."⁸

The Archivist delegated the responsibility to respond to the Committee to Deputy Archivist Claudine Weiher. Deputy Archivist Weiher and Assistant Archivist for Administration James Megronigle⁹ coordinated the response to the Committee through the Director of Personnel, Wilma J. Kriviski, and her deputy, Chief of the Employment Policy Branch, Steven G. Rappold.

Despite the breadth of the Committee's request, Deputy Archivist Weiher determined that only a single document folder, known as the "merit promotion file" pertaining to the selection of the Inspector General needed to be provided to the Committee. In coordinating the response to the Committee, and in directing the Office of Personnel to produce only one file for the Committee, Deputy Archivist Weiher neither sought the assistance of, nor shared the Committee's letter or specific request with, anyone in the Office of Personnel to determine the scope of documents in its possession relating to the Committee's request.¹⁰ At least two other files containing information relevant to the Committee's request were in the possession of the Office of Personnel.¹¹

Chief of the Employment Policy Branch, Steven G. Rappold, received the request to locate the particular file in a telephone call from Deputy Archivist Weiher. Mr. Rappold immediately located and retrieved the file from a National Archives records facility in St. Louis, Missouri.¹² The St. Louis facility sent the records in an envelope addressed to Mr. Rappold.¹³ Mr. Rappold stated to the Committee that he found the contents of the envelope to include "the merit promotion file and contained basically the usual documents, vacancy announcement, applications, and so on."¹⁴ How-

ever, Mr. Rappold provided a different response later in the same testimony when he stated that: "I overlooked the fact the vacancy announcement was not in there."¹⁶ In fact, when the Committee first reviewed the file at the Office of Personnel on August 8, 1991, the vacancy announcement was discovered to be missing by Committee investigators.¹⁶

Mr. Rappold gave the merit promotion file to Personnel Director Kriviski, who, responding to a telephone call from the Deputy Archivist concerning the whereabouts of the file, informed the Deputy Archivist of its arrival. The Deputy Archivist directed that the file be delivered to her for her review.¹⁷ In the course of her review, the Deputy Archivist identified a discrepancy in the dating of some of the documents in the file. The Deputy Archivist returned the file to the Office of Personnel with directions to correct an improperly dated document.¹⁸ The Deputy Archivist then called Personnel Director Kriviski and informed her to expect a visit from the Committee to review and obtain copies of the records in the file.¹⁹ Assistant Archivist Megrnigle followed up that call to Mr. Rappold to determine whether Committee investigators had scheduled a meeting to review the documents.²⁰

In addition to the merit promotion file which was reviewed by the Deputy Archivist, a second file folder was also returned to the Office of Personnel from the St. Louis facility. It also contained documents related to the selection of the Inspector General. Both sets of documents arrived in the envelope together from St. Louis, and were together when the materials were reviewed by the Deputy Archivist and returned by her to the Office of Personnel.²¹ However, the files were separated by National Archives officials for review by Committee investigators. The second file folder contained the record of responses to the unsuccessful applicants, as well as inquiries and numerous unsolicited SF-171 applications received prior to the formal vacancy announcement. Personnel Director Kriviski and her deputy, Mr. Rappold were fully aware of the existence of the other file.²² In addition, a third file of "background on the Inspector General" was also located by Office of Personnel employees and brought to the attention of Mr. Rappold. Committee investigators were neither shown, nor made aware of the existence, of these additional files at the time of their review of documents at the Office of Personnel.

Committee investigators subsequently learned of the additional files and made requests for the documents during questioning and deposition of Personnel Director Kriviski and her deputy, Mr. Rappold. Personnel Director Kriviski and Mr. Rappold told the Committee that they chose not to disclose these additional files to the Committee because they were told by the Deputy Archivist that the Committee was only interested in "the merit promotion file."²³

After the files were returned from the Deputy Archivist, but prior to the August 8, 1991, visit by Committee investigators to review documents at the Office of Personnel, additional review and preparation of the documents was undertaken by Personnel Director Kriviski and her deputy Mr. Rappold. In particular, Mr. Rappold identified the official copy (on yellow tissue paper) of the text of the final letter to all unsuccessful applicants for the position of Inspector General. The letter told the applicants that Lawrence

Oberg, an employee of the National Archives, had been selected as the Inspector General. Stapled to the official copy was a white paper containing the draft of the letter. Mr. Rappold also stated to the Committee that these stapled documents were retrieved as part of the file from St. Louis, and were in the file reviewed by the Deputy Archivist.²⁴

That draft letter contained handwritten notes by Assistant Archivist for Administration James Megrnigle directing that the final letter strengthen the description of the individual selected as Inspector General.²⁵ Mr. Rappold removed the staples from the two documents, returned the official yellow tissue copy to the file, and provided the copy of the annotated draft letter to Personnel Director Kriviski. Personnel Director Kriviski was also provided with a photocopy of the annotated draft letter.

After receiving the annotated draft, Personnel Director Kriviski states that she "just left it on top of the folder, and, you know, didn't do anything with it."²⁶ It is unclear however whether that particular document was the one retained by Mr. Rappold, or the photocopy provided to Personnel Director Kriviski. Personnel Director Kriviski next telephoned Assistant Archivist for Administration Megrnigle to inform him about the existence of the annotated draft containing his handwritten notes. She told him that she did not believe it should be included in the file, and, according to Personnel Director Kriviski's sworn testimony, "his exact words to me were, 'Wilma, I don't give a s-h-t if they see it or not.'"²⁷ Assistant Archivist Megrnigle repeated his view that he did not care whether or not the Committee was shown the document in a subsequent discussion with Mr. Rappold.²⁸

On August 8, 1991, Committee investigators were scheduled to arrive at 10 a.m. at the Office of Personnel to review the documents requested on July 3, 1991. At approximately 8:30 or 9 a.m., Personnel Director Kriviski, and her deputy, Steven Rappold, met again to "review the file" and decided together to shred the annotated draft letter. As described in Personnel Director Kriviski's sworn testimony to the Committee:²⁹

KRIVISKI: We [Kriviski and Rappold] were in our small conference room, and the two of us decided, well, it doesn't belong there, so we took it out.

COMMITTEE: What did you do with it?

KRIVISKI: Shredded it. We were standing by the shredding machine. Steve [Rappold] just put it in the shredder.

COMMITTEE: So there was a decision by the both of you to shred the document?

KRIVISKI: That's correct.

In addition to the shredding of the one copy of the annotated draft, a second copy of the same document provided to Personnel Director Kriviski could not be accounted for, and is believed to have been destroyed or thrown out by the Personnel Director, who responded to a request for the document from Committee investigators by saying that it could not be located.

The significance of the shredded document deepens when considering the selection process itself, and whether Lawrence Oberg was the best qualified of the applicants to become Inspector General.

According to Personnel Director Kriviski, the "annotated draft" letter to unsuccessful applicants did not describe Mr. Oberg to the other applicants in great detail. "We said very little. We normally say very little."³⁰ Nonetheless, although Personnel Director Kriviski cannot recall the exact words in the note, she remembers the meaning of Assistant Archivist Megronigle's note to "speak to Larry's years of investigative experience and his education."³¹ At Mr. Megronigle's direction, the draft letter was changed to reflect these instructions. However, as the Committee's findings make clear in Part Three of this report, there was no basis in fact for this characterization of Mr. Oberg's qualifications.

Indeed, the consensus in the Office of Personnel was that Lawrence Oberg was not the best qualified applicant and was not among the most highly qualified who applied. Personnel Director Kriviski told the Committee that, when examined, Mr. Oberg's qualifications on his application to become Inspector General "wouldn't leap out at me from the list."³² The Personnel Director's deputy, Mr. Steven Rappold told the Committee that, "based on a paper review of 171s [applications]" for the position of Inspector General, Lawrence Oberg "was probably some place in the middle."

The weight of the evidence strongly suggests that the annotated draft letter and the photocopy of the document were destroyed in an attempt to cover up evidence that the National Archives was inflating the credentials of Lawrence Oberg when notifying unsuccessful, and perhaps better qualified, applicants for the position of Inspector General.

The omission of records and document destruction interfered with and delayed the Committee's investigation. These activities raise serious questions about obstruction of Congress,³³ and, in addition, appears to conflict with the applicable standards of conduct for National Archives employees concerning removal and destruction of such records. This includes the prohibition of:

"Knowing and willful misstatement or omission of material facts on, or unlawful concealment, removal, mutilation, or destruction of, official documents, contract files, or administrative records."³⁴

Such standards carry specific penalties and appear in the National Archives Personnel Manual. Yet no administrative review or disciplinary action was taken against Ms. Kriviski and Mr. Rappold for the document destruction and interference with the Committee's investigation. This lapse occurred despite the contemporaneous personal knowledge Archivist Wilson, Deputy Archivist Weiher, Assistant Archivist Megronigle, and General Counsel Gary Brooks (the Designated Agency Ethics Officer) of the actions of Ms. Kriviski and Mr. Rappold. Not even a reprimand or any form of discussion between the Archivist and the employees ever followed.

PART TWO

INAPPROPRIATE ACTIVITIES OF THE INSPECTOR GENERAL OF THE NATIONAL ARCHIVES

The establishment of the first Offices of Inspectors General under the Inspector General Act was an important new approach for detecting and preventing fraud, waste, and abuse. The key to the concept was providing the Inspectors General offices with the resources and independence necessary to perform their jobs professionally. This entailed ensuring that their jobs could be performed in an impartial and independent manner without fear of reprisal from any program official responsible for the matter being audited or investigated.³⁵ These standards were placed within the Inspector General Act, along with the explicit requirement of confidentiality, to ensure completion of an audit or investigation and protect the government employee who may have assisted or brought the matter to the attention of the Inspector General.³⁶

These principles and requirements of the Inspector General Act, as amended, take on special significance in the case of "designated Federal entities," and at the National Archives in particular. Where the Inspector General was selected following a long tenure as an agency official, the latter is all the more important because of the possibility of the need for many recusals in carrying out responsibilities that previously established personal and professional relationships that might interfere with the requirements of independence from agency management. The potential for such an Inspector General continuing to act in concert with agency management undercuts the performance and trustworthiness of the Office of Inspector General. Employees will refrain from filing complaints about either agency management or the Office of Inspector General for fear of risking reprisals. The closing off of this important avenue of information simultaneously makes the Office of Inspector General less accountable, and its problems less detectable, to outside observers.

I. Inspector General Ignored Requirements for Independence and Confidentiality in the Office of Inspector General

On April 17, 1991, the Committee interviewed Inspector General Lawrence Oberg with regard to his functions and activities. Mr. Oberg had been the National Archives Inspector General for 2 years by that date. Yet, Mr. Oberg displayed an indifference and obliviousness to the need for independence and confidentiality of the Office of Inspector General from the agency.

In its interview with Mr. Oberg, the Committee learned that Inspector General Oberg failed to ensure the independent and confidential operation of the office in several ways. These included failing to establish a separate mail stop, computer security, confidential communications "hot-line," or legal services other than the agency's own general counsel. Mr. Oberg essentially continued to function as a subordinate middle management official of the National Archives, sharing facilities, information, and risking the disclosure of confidential complaints with the very management he had responsibility to hold accountable.

These problems were cited again in a follow up letter from the Committee to both Inspector General Oberg and Archivist Wilson. A June 10, 1991, response to the Committee by Inspector General Oberg indicated that he agreed with the Committee's assessment and was taking steps to meet its recommendations.³⁷

II. Inspector General's Conduct Impairs Trustworthiness and Ability of Office of Inspector General in Performance of Its Mission

The Committee also found that Mr. Oberg's conduct impaired the trustworthiness and ability of the Office of Inspector General in performance of its mission. His conduct raises questions about his own compliance with agency standards of conduct and code of ethics which an Inspector General is required to oversee as the "agency watchdog."

In particular, Mr. Oberg kept a Smith and Wesson revolver, which was an artifact belonging to the National Archives, in his personal possession for 8 years from February 21, 1984 to August 16, 1991. According to National Archives records, the Smith and Wesson Schofield-type revolver was donated by a member of Admiral Byrd's 1926 expedition to the North Pole, and had been fired during the expedition by Admiral Byrd.³⁸ Mr. Oberg claimed that he was "given" the gun by a National Archives official for safekeeping when Mr. Oberg was Director of Security. Mr. Oberg kept the gun in his personal office safe, moved it with him in two office moves, and kept it for 2 years after being named Inspector General.³⁹ During the time Mr. Oberg possessed the gun he did not have a Federal weapons certification, and failed to register it as required by local law.⁴⁰ Mr. Oberg cleaned the gun and showed it off to people in his office.⁴¹ While Mr. Oberg strongly denies this,⁴² it was precisely such conduct which led investigators from the General Accounting Office to the discovery of the gun in Mr. Oberg's safe. Mr. Oberg made no effort to return the gun to the National Archives collection until August, 1991, when the General Accounting Office investigators discovered the gun in his possession and reported it to Congress. The gun was then returned to the appropriate National Archives official.⁴³ [See Appendix 1]

Finally, Mr. Oberg was found to have utilized his personal secretary for extensive personal business and correspondence. In over a dozen instances identified by the Office of Special Investigations of the General Accounting Office, Inspector General Oberg directed his personal secretary to prepare and send correspondence during regular working hours to the Boy Scouts and officials of a local recreation league. The correspondence, in part, concerned Inspector

General Oberg's year-long suspension from coaching boys basketball, and his appeals and hearings concerning his suspension.⁴⁴

These activities by Lawrence Oberg raise questions about his compliance with National Archives standards of conduct, including conducting personal business on official time;⁴⁵ the use, removal, or possession of Government property,⁴⁶ and misconduct which impairs job performance or trustworthiness or impairs the ability of a National Archives unit to perform its mission.⁴⁷

III. Inspector General Failed to Recuse Himself From Conflicts Involving His Prior Agency Position

The Committee found that Inspector General Oberg failed to understand the need for objectivity, and, when necessary, to recuse himself from investigations where his prior position and conduct at the National Archives would interfere with the work of the Office of Inspector General. The Committee found that Inspector General Oberg should have recused himself from several cases brought to the attention of the Office of Inspector General.

Examples in which Mr. Oberg appeared to understand when to recuse himself involved two significant procurement fraud cases which focused, in part, on his conduct as a procurement official at the National Archives. Both cases were also investigated by the FBI. However, he failed to recuse himself from other cases, particularly those involving former employees who had filed discrimination complaints against him and the agency.

Two such cases involved a former subordinate of Inspector General Oberg in his capacity as Director of Administrative Services. One case involved his decision to personally conduct a 2-week surveillance of the employee.

At the time of Mr. Oberg's selection as Inspector General, there were a total of seven Equal Employment Opportunity (EEO) complaints outstanding against him as Director of Administrative Services by three different female employees. The complaints included allegations that Mr. Oberg had ordered an employee "to take procurement action contrary to regulation and law," "use of obscene language," "mishandling of on-the-job injury claim," and "denial of ladder promotion."⁴⁸ Three of the seven EEO complaints were filed by one former employee, Ms. Elaine McKoy.

Ms. McKoy also subsequently filed complaints with the Office of Inspector General, and was allegedly the subject of complaints brought to the attention of Inspector General Oberg. During the course of several years, Ms. McKoy had been demoted from a senior procurement management official when she reported to Lawrence Oberg, to a Property Utilization Officer when she was relocated to a National Archives warehouse facility, and ultimately was terminated. Her EEO complaints, and termination case, were pending before the Merit Systems Protection Board (MSPB) and the federal courts during the period when Mr. Oberg's conduct was under review by the Committee.

Inspector General Oberg told the Committee that, in one case, he had received complaints "from three employees" about Ms. McKoy, including complaints about "employees engaging in aerobics on the clock" and "kids coming into the warehouse out there."⁴⁹ Mr. Oberg planned to conduct a physical surveillance of this alleged ac-

tivity. Mr. Oberg asked was by the Committee if anyone else on his staff could have conducted the surveillance. He acknowledged that other staff, including his deputy, could have identified the employees.⁵⁰

Mr. Oberg told the Committee that he was aware of the likelihood of a conflict of interest in the case, and that he "sought legal counsel" from the National Archives General Counsel. However, Mr. Oberg could not recall the legal advice provided to him by the agency attorney, and told the Committee that he decided instead to personally undertake a 2-week surveillance of Ms. McKoy.⁵¹ Mr. Oberg told the Committee that during this time he observed a variety of activities, relating to possible time and attendance infractions, which he concluded were "a lot of minor violations, 15 or 20 minutes, but nothing substantial."⁵²

At the conclusion of the 2-week period, Inspector General Oberg personally reported his conclusions to Assistant Archivist for Administration James Megronigle. Mr. Oberg was asked why he reported to agency management with the results of the surveillance,⁵³ especially since his reporting to someone other than the agency head is prohibited by law. He explained: "I think we told him that there had been several complaints—I told him." When asked if he ever spoke to Deputy Archivist Weiher about his surveillance or the activities of the employees at the warehouse, Mr. Oberg replied that he "could not recall" doing so.⁵⁴ Such reports to agency management raise questions about Inspector General Oberg's compliance with the Inspector General Act, as amended, which states that an Inspector General "shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity" but the agency head.⁵⁵

Contrary evidence, including statements by other investigators in the Office of Inspector General, supports the view that Inspector General Oberg engaged in the surveillance in response to requests from National Archives management, including Deputy Archivist Weiher and Assistant Archivist Megronigle, and that it was related to their defense of the agency and Mr. Oberg in Merit System Protection Board hearings on the EEO complaints and the termination of Ms. McKoy. Particularly illuminating was the contrast between the account of Mr. Oberg and others in the Office of Inspector General with regard to these events.

The Committee asked Mr. Oberg if he shared the results of his surveillance with the Office of Personnel specialist responsible for handling certain aspects of the agency's defense against the EEO complaints as well as the termination of Ms. McKoy:

COMMITTEE: Did you ever share any of the information that was generated from the surveillance with the Personnel Office or anybody from the Personnel Office?

BERG: Not that I recall.

COMMITTEE: Do you ever remember meeting, discussing, sharing information with Mr. Henry Leibowitz of the Personnel Office?

BERG: I may have talked to Mr. Leibowitz.

COMMITTEE: Why would you have spoken to him?

BERG: At that time, probably the McKoy issue in general.

COMMITTEE: Can you elaborate a little?

BERG: I don't recall specifically, but it would not have been unusual for me to be in discussions with Mr. Leibowitz. I don't know if we had one of the EEO hearings or if it was the MSPB hearing coming up on her termination or what, but Mr. Leibowitz handles the employee relations.

COMMITTEE: Did you provide him with any written materials with regard to this surveillance?

BERG: Not that I recall.

COMMITTEE: Do you remember telling him about the surveillance?

BERG: Not specifically.

COMMITTEE: Did he ask you about it?

BERG: I have been in hundreds of meetings, and I really don't recall.⁵⁶

In a memorandum to the file written by the Office of Inspector General investigator who assisted Lawrence Oberg on the surveillance of Ms. McKoy, the investigator states:

"During a meeting on December 11, 1990 in the office of the Deputy Archivist, with the Deputy, Gary Brooks (NARA Legal Counsel), Mr. Oberg, and myself present, the Deputy, Claudine Weiher, and Mr. Oberg exchanged comments concerning the 'surveillance' activity that Oberg and I had conducted at the warehouse.

"Ms. Weiher asked Mr. Oberg about the 'time and attendance thing,' to which Oberg responded, 'We're holding off for now. Remember, I told you?' Weiher replied, 'Yeah, yeah.' It was apparent from their comments that the OIG activity at the warehouse had been previously discussed between them.

"On Monday February 11, 1991, Mr. Oberg asked me where the surveillance notes on Elaine McKoy were. They were in my desk—he took possession of them. A short time later, he had a closed door meeting with Mr. Henry Leibowitz of Personnel.

"The notes, which now have a couple of staple holes in each corner at the top (and give the appearance of having been taken apart to be photocopied a few times) were placed into the official file folder by Mr. Oberg in late March 1991."⁵⁷

In addition to the Committee's findings with regard to the above failure of the Inspector General to recuse himself from the McKoy surveillance, the Committee found repeated evidence of Inspector General Oberg's mishandling of and failure to recuse himself from cases involving Ms. McKoy. Illustrative of Mr. Oberg's recusal problem was his repeated and automatic referral of such cases to the Office of Special Counsel, instead of simply delegating them to the Deputy Inspector General or other qualified staff. Inspector General Oberg told the Committee that he only referred "one of them to the Office of Special Counsel" and "one of them I referred to management."⁵⁸

However, in contrast to Inspector General Oberg's sworn statement to the Committee is an internal memorandum of the Office of Special Counsel about Mr. Oberg. The Office of Special Counsel official stated to her superior: "I discussed the [McKoy] complaint with Mr. DiJulio on January 28th, 1991. He indicated that Oberg had been told a number of times that we did not have the authority to investigate disclosures."⁵⁹ [See Appendix 2]

Despite the fact that the Office of Special Counsel notified the Inspector General repeatedly that they did not have jurisdiction over the McKoy cases he was sending them, he did not seek to recuse himself from further determinations in such cases. In one case that was returned to him by the Office of Special Counsel, instead of seeking to recuse himself and see the case through by delegating it to someone else in the Office of Inspector General, Mr. Oberg "reviewed it again, and ultimately closed the investigation."⁶⁰

Indeed, the Committee found that one case was declined by the Office of Special Counsel and then referred by the Inspector General to National Archives management after he was told by an investigator in his office about information supporting Ms. McKoy's allegations. The investigator's memorandum to the file reads:

"Elaine McKoy submitted a complaint of Mr. Marino's handling of her Time and Attendance records. She said she was being charged leave for time she had neither requested nor taken.

"I asked her what the specific dates were. She told me that I was the investigator, and I should just check Marino's records to see which dates were not supported with requests. (Although McKoy appears to have a basis for her belief that she is being treated unfairly, she has a tendency to be less than helpful).

"On December 7, 1990 I had occasion to review Mr. Marino T&A [time and attendance] records on McKoy. I noted about a half of dozen dates without documentation to support them.

"Upon my return to the OIG [Office of Inspector General] I informed Mr. Oberg that I had found records that seemed to support McKoy's allegation, but I would have to meet with her again and obtain specific dates that she was questioning.

"Before I could schedule a meeting with McKoy, Mr. Oberg referred the complaint to the Office of Special Counsel. And upon their declination, the case was referred to the Office of the Assistant Archivist for Administration (the office in which the problem was alleged to have occurred)."⁶¹

Such repeated inappropriate referrals to the Office of Special Counsel, and referrals and reporting of cases by the Inspector General to National Archives management raises questions about Inspector General Oberg's compliance with the statutory bars against reporting to agency management and against the disclosure of an employee's identity who filed a complaint with his office without the consent of the employee.⁶²

IV. Inspector General Engaged in Agency Program Operations

The Inspector General Act prohibits Inspectors General from engaging in agency program operations responsibilities.⁶³ This takes on a special significance in the context of former agency officials who are appointed by their former agency heads as Inspectors General under the 1988 amendments to the Act.

Lawrence Oberg was a National Archives employee for 9 years prior to his selection by Archivist Don Wilson as the National Archives Inspector General in April 1989. Immediately prior to his selection as Inspector General, Mr. Oberg served as Director of Administrative Services. This position included responsibility and authority for physical security of National Archives property.

In one of Mr. Oberg's final roles as Director of Administrative Services in 1989, he supervised the transfer of records and materials for the Ronald Reagan Presidential Library into temporary warehouses in the Los Angeles, California area. Two years after Mr. Oberg had been selected and had served as Inspector General, construction of the Reagan Presidential Library was completed, and the National Archives was scheduled to move the records and other presidential property from the warehouses into the Reagan Library.

The development of the archival collection at the Reagan Presidential Library was coordinated in California by Supervising Archivist Richard Roderick Soubers. Mr. Soubers also coordinated the move of records from temporary warehouses into the Reagan Presidential Library. Dr. Ralph Bledsoe, Director of the Reagan Presidential Library, assumed his position in February, 1991, and was also present for the transfer of records and other presidential property into the Reagan Library. In Washington, D.C., the National Archives oversaw the transfer through the offices of Deputy Archivist Claudine Weiher and Director of Presidential Libraries John Fawcett. The National Archives official assigned to manage the logistics and operations of the move was Director of Acquisitions and Systems Management Stephen Hannestad.

Inspector General Lawrence Oberg was also present for the duration of the movement of archival materials from the warehouses into the Reagan Presidential Library. Inspector General Oberg scheduled himself to be out of his office and at the location of the move in California for 1 month, from March 26, 1991, to April 26, 1991. As the move was completed early, the Inspector General returned to Washington on April 12, 1991.⁶⁴ He arrived in California on March 26, 1991, and participated in the organizational meeting for the move beginning the following day.

Inspector General Oberg told the Committee that he initiated the trip to California and that he was not asked, assigned, or directed to go by anyone in the National Archives management. Inspector General Oberg told the Committee that he took the trip as a "proactive" measure. "If I could prevent a problem, based on my past experience, I thought that was better than coming in after the fact and investigating a problem or auditing a problem."⁶⁵

When asked if he could recall any other instances when he decided to be "proactive in this way" Inspector General Oberg said that he could not.⁶⁶ When asked if his "proactive" work as Inspector General included having a plan to oversee and review the move, Inspector General Oberg said he did not.⁶⁷ When asked if he had a plan to assess whether the move was going well, he said: "A formal plan, no. I probably had some idea in my mind how it should go" based on his "experience." When asked if he had developed in his mind or on paper a plan to assess "a security issue . . . a transportation issue . . . a safety of records issue," the Inspector General attributed such responsibility to "the agency."⁶⁸

Inspector General Oberg summarized his activities during the move as limited and in the capacity of Inspector General. He told the Committee that, at the organizational meeting on March 26, 1991, the National Archives, Reagan Library staff, and other workers were told that "I was the Inspector General and that I was going to be out and about." When asked "what did 'out and about' entail?"—Inspector General Oberg responded, "I can't say for sure."⁶⁹ He summarized his work from March 26 to April 12 as involving travelling between the warehouses and the Reagan Library "virtually every day."

As an example of his "proactive" work as Inspector General, Mr. Oberg cited the only two examples he could recall. The first was at the organizational meeting on March 26. At the meeting, Inspector General Oberg disagreed with the moving contractor's plan to use dollies instead of forklifts for moving heavy loads of records up and down ramps. When asked to explain if this was a common Inspector General function, Mr. Oberg told the Committee: "If it would prohibit somebody from being injured, yes. It was a safety issue in my mind." Inspector General Oberg stated that he communicated this information to Stephen Hannestad of the National Archives.⁷⁰ The second example of what Inspector General Oberg described as "proactive" work was his observation that temporary security guards hired during the move at the Reagan Presidential Library were not carrying what appeared to be the same type of uniform revolvers, and he reported this to National Archives officials as well.

When Inspector General Oberg was asked if he was involved in the move "operationally" or actually moved any boxes, he told the Committee that "I probably moved a dolly, as we have described, down a hallway. But as far as giving orders or in the management end of it, no, I was not." He went on to state that if he "moved boxes, and I probably, as I said, pushed the dolly, it would have been more than one. I think there were thirty boxes to the dolly." When asked if there was adequate staff to move the boxes, Mr. Oberg replied, "I am sure that there was. If not, they could have probably contracted and got more people there."⁷¹

The Committee found numerous contradictions between Inspector General Oberg's account and evidence contained in the letters to the Committee from the Archivist, documents executed during the move, and statements to the Committee by other individuals involved in the move.

a. Agency Purpose and Desire for Inspector General to Become Involved in Move of Archival Materials to Ronald Reagan Presidential Library

Inspector General Oberg, as well as other National Archives managers, stated in sworn testimony to the Committee that he initiated the travel to California and involvement in the move on his own, and that he was serving only the Office of Inspector General on a "proactive" basis. Written statements from the Archivist to the Committee, however, reflect that the decision was reached in concert with National Archives officials and that he was seeking to further the agency's programmatic and management objectives. On June 7, 1991, the Archivist responded to a query from the Committee about Mr. Oberg's trip and conduct in California by stating:

"As you are aware, Mr. Oberg was formerly Director of Administrative Services and, in that capacity, had supervised the Reagan move from Washington, D.C. to temporary space in Los Angeles in 1989.

"Being involved in the initial move gave Mr. Oberg some insights that we believed, and he agreed, would be useful as the second and final stage of the move to the library was completed.

"He also coordinated with the local law enforcement agencies that would be assisting in the transportation of security classified material and could provide valuable assistance in that regard. He was willing to do this, and I think we all felt that this was a special situation that would not lead to Mr. Oberg's involvement in other projects."⁷²

Prior to his departure for California, Inspector General Oberg met with Deputy Archivist Weiher and Director of Presidential Libraries John Fawcett to discuss his travel and involvement in the move. He also called Mr. Stephen Hannestad of the National Archives who was in California coordinating the readiness of the Reagan Library,⁷³ as well as Richard Roderick Soubers,⁷⁴ the site manager and Supervising Archivist of the Reagan Presidential Library. While in California, Inspector General Oberg telephoned the Deputy Archivist at least once, and the Director of Presidential Libraries at least twice to appraise them of the status of the move.⁷⁵

b. Description by Reagan Library and National Archives Officials of Inspector General's Activities During Move

Other Reagan Library and National Archives officials on the scene in California, described Inspector General Oberg's involvement very differently than Mr. Oberg's own account. Dr. Ralph Bledsoe, Director of the Ronald Reagan Presidential Library was present at the Library beginning February 1991. Dr. Bledsoe was asked by the Committee if he understood Lawrence Oberg's role in California to be that of an Inspector General. Dr. Bledsoe said it was not. Dr. Bledsoe stated that during the Reagan Administration he had worked closely with the President's Council on Integrity and Efficiency (an umbrella organization of Federal Inspectors General) and "fully understood" what the Inspectors General "were

all about." He stated that he had asked the site manager and Supervising Archivist Richard Roderick Soubers specifically if Lawrence Oberg was acting in his capacity as National Archives Inspector General during the move. Dr. Bledsoe quoted Mr. Soubers as saying: "No, he is here to assist in the move." Mr. Soubers added that Lawrence Oberg had coordinated the first phase of the transfer of records from Washington, D.C., to California in 1989.

Dr. Bledsoe recalled that Inspector General Oberg spent the first 2 days of his visit assisting specifically with the move of gift collections which were being moved from a separate facility in Laguna Niguel, California. Dr. Bledsoe stated that Inspector General Oberg was involved in the coordination of that move, and worked to ensure that the trucks were loaded in the right order and consistent with the plan for unloading and transferring the material to the Library. Dr. Bledsoe stated that Lawrence Oberg played an instrumental role in strategic discussions regarding specific details and the scheduling of the move, and in one case provided the expertise on which a major schedule and planning change was made.⁷⁶ Richard Roderick Soubers, site manager and Supervising Archivist of the Ronald Reagan Presidential Library, had worked for the National Archives for 16 years and was the Acting Director and Supervising Archivist of the Reagan Presidential Library pending the appointment of Dr. Bledsoe in early 1991. In answer to a Committee question concerning Mr. Oberg's role in the move, Mr. Soubers replied that Lawrence Oberg "was assisting in the move, far removed from the role of an Inspector General." When asked to repeat that statement later in the discussion, Mr. Soubers simply stated that Lawrence Oberg was "very helpful, part of the team . . . but not there as IG."⁷⁷

Mr. Soubers stated that he had been told by Director of Presidential Libraries John Fawcett that Lawrence Oberg was coming out to California to assist in the move. Mr. Soubers recalled Mr. Fawcett mentioning Mr. Oberg's prior experience as coordinator of the first phase of the move in 1989.

Mr. Soubers stated that, just prior to the move, Lawrence Oberg had called him to say that he was coming out to assist and "would be helpful in any way that he could" and that he elaborated about his role in 1989 when he was the National Archives Director of Administrative Services. Mr. Soubers told the Committee that he discussed a detailed outline of the move with Lawrence Oberg regarding the schedule and plans for the move, and discussed a "sequence of options." Mr. Soubers told Lawrence Oberg that he was glad to have his help because of his past experience and because Mr. Soubers felt that additional help was needed.⁷⁸

Mr. Soubers stated that from the time Lawrence Oberg arrived in California he was "not there as an IG, but there for the move." Mr. Soubers understood that Lawrence Oberg was "there to assist just like all the other people." Mr. Soubers stated that the group involved in the "move team," including Lawrence Oberg, met and divided up responsibilities ranging from logistics to specific parts of the move.

According to Mr. Soubers, Lawrence Oberg spent the first part of his time in California helping to coordinate the move of gift collections from the Laguna Niguel, California, warehouse. This coin-

cides with the same description of Lawrence Oberg's initial responsibilities provided by Dr. Ralph Bledsoe and is substantiated by the documentation of the move. Mr. Soubers elaborated on his description of activities by saying that everyone had a variety of responsibilities, including: Pushing pallets, coordinating truck loading, staging of pallets prior to loading, working on inventory, properly placing material for pallet staging, and following through with the move once documents, materials, and property were delivered to the Library.

Mr. Soubers recalled Inspector General Oberg moving pallets at either the Laguna Niguel or West Los Angeles warehouse and was "helpful in any way he could be." Mr. Soubers recalled Inspector General Oberg being centrally involved in the scheduling and planning discussions regarding the coordination of moving documents, materials, and property from storage into the Reagan Library. Mr. Soubers also recalls that Inspector General Oberg's involvement in such discussions led to a more cost-effective scheduling plan in one instance.

Mr. Soubers was asked if he recalled any activities by Mr. Oberg during the move that were consistent with his role as Inspector General, or where Mr. Oberg said he was performing an Inspector General function. Mr. Soubers answered "no."

In addition to the views of these individuals, other National Archives employees involved in the move provided testimony sharply differing from Mr. Oberg's account.

Mr. Stephen Hannestad, National Archives Director of Acquisitions and Systems Management, performed the job of "making sure that the permanent facility was ready for transfer to the Archives and ready for our use."⁷⁹ Mr. Hannestad was present at the Reagan Library during the first week of the move, participated in the organizational meeting with Inspector General Oberg on March 26, 1991, and witnessed Mr. Oberg in other activities. Their trips to California and participation in the move overlapped for 4 days.⁸⁰

Mr. Hannestad described the organizational meeting, which Inspector General Oberg attended upon arrival in California on March 26, 1991, as "a final review with GSA on the move plans."⁸¹ Mr. Hannestad recalled that at that meeting, Mr. Oberg "requested to check out the pallet design that was being proposed for use."⁸² On another occasion, Mr. Hannestad recalled that Mr. Oberg complained to him about "one of the contract employees that he did not feel was working and brought that to my attention."⁸³

Last, Mr. Hannestad witnessed Inspector General Oberg physically moving pallets of full boxes and participating in the movement of materials into the Reagan Library. "Yes, I saw him move a couple of pallets, and I also saw him shelve a couple of boxes." Upon further questioning, Mr. Hannestad revised his statement to say that he witnessed Inspector General Oberg moving at least "a half a dozen pallets on the loading dock of the Reagan Library," and that each pallet contained 180 boxes of records.⁸⁴ In fact, this meant that Mr. Hannestad witnessed Inspector General Oberg moving at least 2,080 boxes of records. This stands in sharp contrast to Mr. Oberg's statement to the Committee that he may have "pushed one dolly" which would have amounted to no more than 30 boxes of records.⁸⁵

c. *Documents Identifying Inspector General's Role as Agency Official and Direct Participation in Agency Program Operations*

Documentary evidence also exists which identifies Inspector General Lawrence Oberg as performing the operational functions of the National Archives during the move, and as authorizing and approving contractor activity on behalf of the National Archives. These documents substantiate and go beyond the statements and descriptions of the Inspector General made by Dr. Ralph Bledsoe, Richard Roderick Soubers, and Stephen Hannestad.

The Committee examined over one thousand pages of shipping manifests, receipts, chain of custody, and transfer papers generated during the 1991 movement of archival material into the Ronald Reagan Presidential Library. These include such details as pallet inventories, truck inventories, and transportation check sheets. The Committee focused on 47 contractor documents, which were "created and used by C and M transfer, the company with which the General Services Administration (GSA) contracted to move the archival materials from the West LA and Laguna facilities to the Reagan Library."⁸⁶ These documents also record certain on-site activities after the archival materials were delivered and then transferred into the Reagan Library. [See Appendix 3]

These documents describe the manpower and work, points of origination and delivery, material moved, hours of work performed, and contain the names and authorizing signatures of agency officials. The documents are dated from March 31, 1991, the first day of the move, through April 11, 1991, the last day of the move. Each document identifies a National Archives official as a contact for loading and delivery of the materials, and each document contains an authorizing signature by a National Archives official for approval of the work performed in the loading and delivery of the materials.

Consistent with the description by Dr. Bledsoe and Mr. Soubers that Inspector General Lawrence Oberg was assigned to oversee the loading of material from the Laguna Niguel warehouse. Appearing in typed print at the top of each document for the transfer of property from the Laguna Niguel warehouse, is the agency contact's name, "Larry Oberg" along with his local hotel telephone number. This was not limited to one or two instances. Inspector General Oberg's name ("Larry Oberg") is listed as the designated agency contact on all 21 documents relating to shipments from the Laguna Niguel facility to the Reagan Presidential Library. In addition, Lawrence Oberg signed as the authorizing National Archives official approving the contractor's work and releasing the property for shipment to the Reagan Presidential Library on fifteen of the 21 documents. On four of the documents, Mr. Oberg signed as the authorizing National Archives official approving delivery and off-loading of materials from the Laguna Niguel facility to the Reagan Presidential Library, and on one occasion he signed as the authorizing National Archives official approving both the loading and delivery of the same truckload of material. In addition, on three occasions Inspector General Oberg signed documents on behalf of the National Archives entitled "Move Request For On Premise Activity," for activity on the premises of the Reagan Presidential Li-

brary. On one such occasion, he signed as the approving official for both the beginning and completion of the work.⁸⁷

In an unsolicited letter written by the National Archives Legal Services Staff which accompanied the documents provided to the Committee, it is claimed that Mr. Oberg "did not realize . . . that his name had been typed on the documents. He also told me that he understood his signature to signify acknowledgement that a truck or work crew had arrived at the work site, rather than authority for C and M employees to do anything."⁸⁸ This claim is made despite Mr. Oberg's prior responsibility for National Archives' procurements as its Director of Administrative Services, and his 1989 responsibility for transferring the Reagan archival material into the same warehouses.

It is abundantly clear from the testimony and related records that Mr. Oberg was involved in the supervision, authorization, and activity of the National Archives move of property from temporary warehouses into the Ronald Reagan Presidential Library. The formal assignment of Mr. Oberg as the agency contact for the Laguna Niguel facility substantiates the fact that the National Archives management and the Reagan Presidential Library officials mutually understood and agreed that Lawrence Oberg was to "help with the move" and was "part of the team." The observations of these same individuals, and Mr. Oberg's authorization for contractor satisfaction of their obligations to the National Archives, further substantiates his close personal involvement in coordinating the movement of archival material to the Reagan Library. These activities are National Archives program, operation, and administrative functions and responsibilities, and are not properly Inspector General responsibilities or functions. The assignment of these responsibilities by National Archives and Reagan Presidential Library officials, and Inspector General Oberg's performance of these functions, raise questions about his compliance with a statutory prohibition against his assignment or involvement in agency program operations activities.⁸⁹ It also creates a conflict of interest, and impairs the Inspector General's impartiality and his ability to appropriately audit or investigate the Reagan Presidential Library. Furthermore, the extensive and reliable record of contradictions to Inspector General Oberg's own sworn testimony to the Committee raises serious questions about his compliance with the law prohibiting false statements.⁹⁰

PART THREE

SELECTION OF THE INSPECTOR GENERAL OF THE NATIONAL ARCHIVES

Creation of National Archives Office of Inspector General

a. *October 17, 1988: Enactment of Law*

In 1988, the Congress amended the Inspector General Act of 1974 to include the National Archives and Records Administration as a "designated Federal entity."⁹¹ The change in law became effective on October 17, 1988, and created a statutory deadline of 6 months (April 17, 1989) to establish an Office of Inspector General.

An important difference between the original law and the 1988 amendments was the process by which the Inspector General was to be appointed. Unlike the original law, which required appointment by the President and confirmation by the Senate, the 1988 amendments placed authority for selection exclusively in the hands of the "agency head." This distinction was made based on the size of the 33 "designated Federal entities" compared to larger government agencies believed to require presidential appointment. The responsibility also paralleled other requirements of the law, placing more responsibility on the agency head to increase agency accountability through stronger auditing.⁹²

b. *National Archives Response To New Law*

In response to the requirements of the new law, the Archivist involved Deputy Archivist Claudine Weiher and together they coordinated the establishment of the Office of Inspector General. Other National Archives managers and staff involved were: Assistant Archivist Megronigle, who assisted in the review and recommendation of candidates to the Deputy Archivist; John Constance, Chief of the Program and Policy Analysis Division, who was assigned to write the National Archives implementation plan for its new Office of Inspector General; and George Henderson, then Chief of the National Archives Office of Audits and Compliance. Mr. Henderson served as liaison for to the Inspectors General community, reporting to the Archivist, and assisted in writing the scheduling, staffing, and other technical specifications of the agency's implementation plan.⁹³

Despite the best efforts of staff such as Mr. Constance and Mr. Henderson, the plan approved by the Archivist did not discuss the criteria, qualifications, or process for selecting an Inspector General. This crucial ingredient for establishing an Office of Inspector General was not only missing from the agency plan, but also did not appear on the agency's agenda until 4 months after the law

was passed, and just 2 months before the statutory deadline for selecting an Inspector General.

Deputy Archivist Claudine Weiher attributed the lapse and the delay to the awaiting of guidance from the Office of Management and Budget (OMB).⁹⁴ However, despite the desirability of having agencies consult with OMB when necessary about the Office of Inspector General functions, such consultation is not required by law, particularly as a condition for selection of the Inspector General. Furthermore, the guidance which was awaited by the National Archives was issued on January 4, 1989, and the National Archives waited another 2½ months before posting the vacancy announcement.⁹⁵

On February 15, 1989, the first materials related to the Office of Inspector General were provided to the Office of Personnel for the purpose of writing a position description and a vacancy announcement. A copy of the vacancy announcement was transmitted to the Archivist, Deputy Archivist, and Assistant Archivist for Administration. The Deputy Archivist decided that announcement would be made only in the Washington, D.C., metropolitan area. The Deputy Archivist also directed the Office of Personnel to limit the response period to "10-14 days."⁹⁶

c. *March 13, 1989: Vacancy Announcement Posted*

April 7, 1989: Archivist Leaving Country For Overseas

April 17, 1989: Statutory Deadline for Agency Head to Name IG

On March 13, 1989, the National Archives posted its Vacancy Announcement for the position of Inspector General. The response deadline was 11 days later on March 24, 1987. The vacancy announcement was posted 33 days from the statutory deadline of April 17, 1989, but the National Archives had a shorter internal deadline of April 7, 1989, because the Archivist was leaving for an extended trip to the Soviet Union. April 7th would be his last day in the office prior to the statutory deadline for the selection of an Inspector General.⁹⁷

Upon receiving the applications, the Office of Personnel conducted a preliminary review to identify those applicants who met the basic requirements—in this case, eligible as a GS-15 or a GS-14 in line for a merit promotion. On March 28, 1987, having completed this screening, a list of nineteen names was transmitted to the Archivist. He had 10 days, including a weekend, to review the applications, consider the candidates, and personally select the Inspector General. [See Appendix 4]

Of the nineteen applicants, two were National Archives employees: Lawrence Oberg, Director of Administrative Services, who had served at the National Archives for 9 years; and George Henderson, Chief of the Audit and Compliance Division. For the previous 6 months, Mr. Henderson had served as the Archivist's liaison to the Inspectors General community, and he had assisted in writing the technical specifications, staffing requirements, and timetable of responsibilities for the National Archives under the Inspector General law. The other seventeen eligible applicants included numerous individuals with experience, education, and training in the Inspector General community.⁹⁸

During the remaining 10 days for review, the Archivist continued to rely upon Deputy Archivist Weiher. Ms. Weiher, in turn, requested the help of Assistant Archivist for Administration, James Megronigle. Mr. Megronigle read through the applications and the accompanying evaluation forms, and he recommended Lawrence Oberg as the best qualified applicant for Inspector General. Mr. Megronigle made this recommendation to Ms. Weiher,⁹⁹ who in turn made this recommendation to the Archivist.

The Deputy Archivist appeared to place the greatest emphasis upon whether the successful candidate for Inspector General was someone already employed by the National Archives. She relied heavily on the assistance of Mr. Megronigle, whom she asked to review the applications, and who also preferred to hire "internal candidates." Mr. Megronigle affirmed this preference stating:

COMMITTEE: So the pattern [at the National Archives] is where there's an internal candidate, there's a strong priority given to people with experience at the Archives?

MEGRONIGLE: That's certainly been my personal approach.¹⁰⁰

Mr. Megronigle did not independently interview any of the applicants. However, as the immediate superior to Lawrence Oberg, he completed the Supervisory Appraisal.¹⁰¹ [See Appendix 5] On that form, Mr. Megronigle gave Mr. Oberg the highest marks—"Exceptional"—for his auditing and investigative ability and experience based on "On-the-Job-Performance." The Committee, however, determined from the sworn statements of the Deputy Archivist and the Assistant Archivist, that, in fact, Mr. Oberg did not have this background, and that such an "on the job" appraisal was entirely unfounded.¹⁰² Deputy Archivist Weiher's statement to the Committee was: "Maybe I didn't look at it."¹⁰³

Indeed, it was impossible for Mr. Oberg to have been engaged in "on-the-job" auditing during his prior 9 years of employment at the National Archives. As described by both Deputy Archivist Weiher and Assistant Archivist Megronigle, during Mr. Oberg's first 5 years of employment, the National Archives was still within the General Services Administration which performed all auditing functions.¹⁰⁴ Upon receiving independence in 1985, all auditing functions were transferred, gradually, to the "audits and compliance staff that was established,"¹⁰⁵ headed by Mr. George Henderson, with no involvement by Mr. Oberg from 1985 through his appointment as Inspector General in April 1989.

There was no basis for Mr. Megronigle rating Mr. Oberg as "Outstanding" for his "investigative ability" because of his "On The Job Performance." Again, as described in sworn testimony of Deputy Archivist Weiher and Assistant Archivist Megronigle, Mr. Oberg can barely be said to have possessed or exercised the authority to conduct or supervise investigations, much less to have merited the highest possible rating from Mr. Megronigle. Indeed, Mr. Megronigle stated the following when asked by the Committee to describe the scope of Mr. Oberg's "On-the-Job" investigative responsibility as Director of Administrative Services:

COMMITTEE: To your knowledge, was he [Lawrence Oberg] doing much in the way of investigations in his job as Director of Administrative Services?

MEGRONIGLE: What do you mean by investigations?

COMMITTEE: In any regard. Did he have responsibility—let me start there—for conducting investigations into any wrongful activity or problems?

MEGRONIGLE: He would work with the Federal Protective Service officers if any problem occurred in the Archives building, such as the theft of someone's handbag or coffee money or things like that.

COMMITTEE: Minor?

MEGRONIGLE: Minor things that we would probably characterize as street crime.

In late 1985, two former GSA investigators were transferred to the National Archives and assigned to work under Mr. Oberg late that year. There was so little work for them that the positions were abolished in June 1986.¹⁰⁶ The Deputy Archivist can only remember two investigations that were conducted:

WEIHER: One had to do with accepting gratuities from a contractor, if I recall. The other one had to do with the ordering off of an ugly door closure off of a brass door, and they wanted to investigate that for—a brass historic door—for abuse of power. I don't recall any other investigations that they did.¹⁰⁷

When Assistant Archivist Megronigle was asked about the nature of their work he explained:

MEGRONIGLE: They did some investigations. I remember one in particular involving an employee that went on for a year or so that they were investigating allegations of her having lunches with a contractor, things like that, baseball tickets. Fresh tuna fish I think was something she was accused of accepting.¹⁰⁸

According to Mr. Megronigle, the investigative positions were abolished shortly thereafter when a management study concluded they weren't necessary:

MEGRONIGLE: It was an extremely light effort, and the conclusion was that it simply didn't support having investigators.

COMMITTEE: So that meant that during the roughly year and 4 months that they were under Mr. Oberg at Administrative Services, they weren't that busy in their investigative functions?

MEGRONIGLE: That's correct. They weren't very busy.¹⁰⁹

Mr. Megronigle answered additional questions placing Mr. Oberg's investigative training at least a decade before he was selected for Inspector General and before he ever worked at the National Archives.¹¹⁰ Mr. Megronigle's testimony also confirmed the conclusions of the Committee that Mr. Oberg was not conducting or supervising audits, was not conducting investigations, and had two employees who were minimally involved in any investigations.

COMMITTEE: But you would agree, wouldn't you, that from basically 1980 through the time that he [Lawrence Oberg] applied for the job [of Inspector General] in 1989 he wasn't doing any auditing?

MEGRONIGLE: He wasn't personally conducting those kinds of investigations, but there was that period of time in which Plitman and Giordano were doing some work, although limited, and reporting to him.

COMMITTEE: Right, but they were doing no audit functions?

MEGRONIGLE: No, they were not doing audit functions. They were doing investigative work.

COMMITTEE: And their investigative functions were?

MEGRONIGLE: One or two.

COMMITTEE: One or two, and so minor that the positions were abolished?

MEGRONIGLE: Some street crime.¹¹¹

The sworn testimony of Deputy Archivist Weiher and Assistant Archivist Megronigle refutes the contents of the supervisory appraisal. This raises serious questions about whether Mr. Megronigle, in writing the supervisory appraisal of Mr. Oberg, complied with the law prohibiting false statements.¹¹²

In addition to relying upon the false and misleading supervisory appraisal filed with Mr. Oberg's application, the Archivist also ignored or failed to pursue additional information regarding Mr. Oberg's background and qualifications. These included at least seven Equal Employment Opportunity (EEO) complaints against Mr. Oberg which were outstanding at the time of his candidacy for Inspector General [See Appendix 6], as well as unanswered questions surrounding Mr. Oberg's involvement in a controversial procurement action. A criminal probe was being conducted of Mr. Oberg with regard to the procurement action by the Federal Bureau of Investigation at the time of the Archivist's selection of Mr. Oberg as the Inspector General. [See Appendix 9] The Archivist was personally aware of Mr. Oberg's records with regard to EEO complaints by female and minority employees.¹¹³ The Archivist was also aware that the FBI was investigating a controversial procurement action involving Mr. Oberg's Department of Administrative Services.

Indeed, Archivist Wilson had met with a special agent of the Federal Bureau of Investigation on November 15, 1988, in the Archivist's office. The Archivist was told that a number of National Archives employees would be interviewed relative to allegations of improprieties within the National Archives procurement process.¹¹⁴ The Archivist specifically learned from the FBI that its investigation was focused on "a contract for security services awarded to Vance International, Inc."¹¹⁵ The Archivist told the FBI agent that he too had received complaints from National Archives employees regarding grievances in the agency's procurement office.¹¹⁶

Neither the controversy surrounding the contract award to Vance nor the FBI's investigation were a secret. Within weeks of the Archivist's meeting with the FBI, local newspaper stories appeared more than once concerning the procurement award to Vance and the FBI's probe of National Archives officials. The news accounts

stated that "a company executive received an exclusive, one-on-one briefing from a top Archives official two weeks before the contract was publicly announced."¹¹⁷ Nor were the stories unknown to high ranking National Archives officials, including Assistant Archivist for Administration James Megronigle and the public relations spokesperson for the agency, who were interviewed and quoted in the newspaper articles.

The FBI interviews of top officials at the National Archives extended from January 31, 1989, to May 2, 1989. Lawrence Oberg was interviewed three times by the FBI in February and March of 1989, and despite these events, he was selected as Inspector General in early April. During this time, the Archivist made no effort to explore a connection between the FBI's investigation and Lawrence Oberg despite his knowledge of the focus of the FBI's investigation on the award to the security services contract, and that Mr. Oberg had been the senior agency official for both security services and procurement during the time period in question.

Despite these known facts and questions surrounding a candidate for a position as the "agency watchdog" or the "Mr. Clean" of the agency as Inspector General, the Archivist took yet another unusual step: Lawrence Oberg was the only applicant interviewed for the position of Inspector General.¹¹⁸

While interviewing may not have been a compulsory requirement for the level and personnel criteria in the case of the National Archives Inspector General, the failure to engage in such interviews seriously undermines the fairness and professionalism of the selection process at the National Archives. It further underscores the likelihood that the selection process at the National Archives failed to provide the Archivist with a basis for comparison or justification in making his selection.

As a matter of good public policy, where a former agency employee is appointed Inspector General, especially one who is chosen above applicants with more experience in the Inspector General community, there should be a heavy burden upon the agency to demonstrate that preferential treatment has not been given to a former agency official.

On April 7, 1987, the Archivist and the Deputy Archivist met with Mr. Oberg for approximately 45 minutes to 1 hour. During the meeting, the Archivist discussed the position of Inspector General with Mr. Oberg and informed him that he was the Archivist's selection for the position. The formal personnel action was delayed, and instead of reflecting the selection as required by statute by the agency head, it was signed in his absence by the Deputy Archivist. [See Appendix 4]

PART FOUR

THE VANCE INTERNATIONAL, INC. CONTRACT FOR SECURITY SERVICES

Agency History

The National Archives and Records Administration was granted independence from the General Services Administration (GSA) by Congress in April 1985. The purpose of the change in law was to liberate the National Archives from a pattern of control and politicization which the Congress believed was burdening the operation and effectiveness of the National Archives. The independence of the National Archives was to greatly expand the authority, resources, and responsibilities of agency officials. Once gaining independence, however, a transition period was required before the National Archives became fully functional in many of the operational areas managed in the past by GSA.

Changes at the top accompanied independence. Within two weeks, Archivist Robert Warner retired and was replaced by Acting Archivist Frank Burke. Dr. Burke was Acting Archivist until his departure in December 1987, when he was succeeded by the newly confirmed Archivist of the United States, Dr. Don Wilson.

Within 1 year of independence, other management changes were also made. In 1986, Claudine Weiher, was named Acting Deputy Archivist. Ms. Weiher was in her 19th year of service at the National Archives.¹¹⁹ James Megronigle was named Acting Assistant Archivist for Administration. He was beginning his 9th year of service at the National Archives.¹²⁰

a. Procurement Authority And Security Services

Lawrence Oberg, Director of Administrative Services, had served in his position for five of his 6 years at the National Archives.¹²¹ The position entailed responsibility for several other areas, including: the Facilities Management Branch, the Procurement and Contracting Branch, and Security and Safety. However, until mid-independence, most of these functions were operated and managed by GSA. GSA and the Public Building Service still managed the National Archives building, so Mr. Oberg's Facilities Management staff amounted to less than five people plus a small labor crew to conduct internal moves of boxes and other materials. GSA also handled all procurements over \$25,000, limiting Mr. Oberg to small purchases under that amount. Lastly, GSA hired and oversaw the Security and Safety Services, which placed Mr. Oberg in a liaison role.¹²²

Despite the transfer of authority and functions to the National Archives upon independence, there was a more gradual develop-

ment of expertise and capability in specific areas of responsibility. GSA continued to perform certain functions, such as large procurements. The National Archives security services contract was one example. In May 1986, more than a year after the National Archives became independent, its contract award for security guards was conducted by GSA. The low-bid contract was awarded to Old Dominion, Inc. for 1 year with a 2nd year renewal option.

One year later, in May 1987, the National Archives renewed the Old Dominion contract for a 2nd year. However, just a few months later, on September 3, 1987, the National Archives gave Old Dominion 30 days notice and terminated its contract "for convenience."¹²³ The termination of Old Dominion required the installation of a new security force within 30 days.

The National Archives chose this time to exercise its independent authority and depart from its reliance on GSA for the execution and award of large procurements. It is also at this point where the record of controversy and questions about the role of National Archives officials in the contract award first appear.

On September 4, 1987, the day after terminating Old Dominion, the National Archives issued a Request for Proposals (RFP) for a multiyear security services contract ultimately resulting in the expenditure of several million dollars. In this action, National Archives officials set several agency precedents by: acting independently of GSA in the writing, issuance, and award to a security services RFP and contract; transcending by more than \$3 million the procurement award capability which under GSA had been limited to small purchases of \$25,000; issuing an RFP and awarding a contract under a declaration of "emergency conditions"; and awarding a contract on a negotiated, rather than a low bid basis.¹²⁴

The conventional public notice requirement was substituted with a list of four invited bidders. The standard time period for response to the RFP was shortened to 14 days, and the bidders would only have 30 days from the issuance of the RFP to be prepared to begin work. The four invited bidders included Pinkerton, Inc.; Vance International, Inc.; Wackenhut Co.; and Wells Fargo Guard Services, Inc.¹²⁵ The RFPs were given to the bidders on September 4th and the response deadline was September 18th. Only Pinkerton and Vance, which replied in the short time period. With less than two weeks remaining before Old Dominion's termination date, the National Archives entered into negotiations with Pinkerton and Vance, which were not concluded until almost the last possible day. The last negotiation documents are dated September 29th, and Mr. Megronigle was not sent the Technical Evaluation Committee's formal review and recommendations until October 1st. He approved the recommendation and authorized the award of the contract to Vance on October 2, 1987. The 3-year contract (1 year and 2 renewal years) was for a total of \$3.8 million.¹²⁶

b. *Old Dominion: Performance, Renewal and Termination*

Although the Old Dominion security contract was awarded by GSA, its oversight and management became the responsibility of the National Archives, and, in particular, Lawrence Oberg. Mr. Oberg oversaw the security contract as Director of Administrative Services. Mr. Oberg also served as both the Contracting Officer's

Technical Representative (COTR) and the Contracting Officer's Representative. The former conducts inspections and the latter is the agency representative to the contractor.

The record of performance of the Old Dominion security guards at the National Archives reflects a continuous history of unsupervised and unprofessional conduct. The contractor was penalized numerous times by the National Archives for substandard performance. Problems with the Old Dominion contract were evident for the year leading up to its renewal in May 1987, and afterwards until termination in September 1987.

During the first year of the contract, examples of a lack of supervision, improper behavior, and unprofessional conduct of the security guards included: verbal abuse of patrons, inadequate staffing of stations, smoking, listening to portable stereo headsets, sleeping in the main research room, and being out of uniform. In another instance, an Old Dominion guard stole a book from the museum gift shop and stood in line to obtain the autograph of the guest author. Guards were cited for falling asleep on duty, supervisors and guards were cited for engaging in fist fights.¹²⁷ On one Sunday morning, a senior National Archives official witnessed a guard conducting his rounds wearing his underwear and gun belt.¹²⁸

c. *Physical Attack on "The Charters of Freedom" Exhibit*

Additional problems before renewal of the Old Dominion contract constituted a direct threat to the security of the National Archives' collections. One major incident occurred on October 10, 1986, when a man entered the National Archives carrying a one-pound carpenter's claw-hammer and began smashing the glass case containing *The Charters of Freedom*, an exhibit of the Constitution of the United States and the Bill of Rights. The attack was unprecedented in the 35 years since the exhibit opened in 1952.

The attack occurred almost as soon as the museum opened on the morning of October 10, 1987. The attacker, who had been seen outside by other visitors chipping at the exterior columns of the National Archives, concealed the hammer in his coat, entered the building, rushed the exhibit case, and began smashing the glass. He broke through three times, but the documents were protected by a thick layer of bulletproof glass inside the case. The attacker was subdued by guards who rushed to the scene.¹²⁹

At the time, no security guards were posted to observe activities outside the building. In addition, no metal detection or x-ray equipment was used because the National Archives desired to maintain an open environment around the exhibit. Following the attack, closed circuit cameras were installed to monitor activities outside the building, security around the exhibit was strengthened, and stronger bulletproof glass was installed after extensive testing was conducted.¹³⁰ However, metal detection equipment was not installed until the summer of 1991 when concern for terrorism threats related to the Persian Gulf War resulted in increased security throughout the government.¹³¹

d. *Renewal of Old Dominion Contract*

The history of substandard conduct and security by the Old Dominion guards generated a high level of dissatisfaction by National

Archives officials. In January 1987, discussions were held by then Acting Deputy Archivist Weiher, Acting Assistant Archivist for Administration Megronigle, and Director of Administrative Services Oberg. The extreme dissatisfaction with the Old Dominion contract was shared by Ms. Weiher, Mr. Megronigle, and Mr. Oberg. Mr. Megronigle told the Committee:

COMMITTEE: Was there anyone in NARA [National Archives] management that you can recall who was pleased with Old Dominion in early 1987? Claudine was not. You were not. Oberg was not.

MEGRONIGLE: No one that I'm aware of.¹³²

Also in January, Mr. Megronigle met with Mr. Oberg and Ms. Elaine McKoy, the Procurement Branch Chief, to discuss whether it was possible to obtain a new security contractor and avoid renewing the Old Dominion contract. Mr. Megronigle was surprised and disappointed to learn that it was not considered possible to conduct a procurement to replace the security guard contractor within the 5 months remaining on the Old Dominion contract. It was also believed that such a contract would not improve the quality of the guards because of the GSA low-bid procurement standard. Mr. Megronigle believed that the only alternative would have been to issue an "emergency procurement." However, despite the poor performance by the Old Dominion guards, he felt that the National Archives lacked sufficient grounds for such action.¹³³

Indeed, National Archives officials did not hold the Old Dominion security guards negligent for failing to prevent the 1986 attack on the Charters of Freedom exhibit. According to Deputy Archivist Claudine Weiher, "I disagree that the hammer case was a major flaw in the security force. I don't think it was." According to Assistant Archivist for Administration James Megronigle, "I was particularly pleased that he [the Old Dominion guard] didn't shoot this individual."¹³⁴

The January 1987 meetings concluded with Mr. Megronigle's determination that the National Archives had no other choice but to renew the Old Dominion contract. However, he did begin to consider alternatives to the GSA low bid procurement, and he and Mr. Oberg discussed conducting a "negotiated procurement" and "source-selection procedures."¹³⁵

The dissatisfaction of National Archives officials with the Old Dominion guards continued, and in February 1987, then Acting Deputy Archivist Weiher obtained promotional literature about Vance International, Inc. from a former colleague at the General Services Administration. Ms. Weiher was provided with the information after complaining to the former colleague about the quality of the National Archives guards. Ms. Weiher gave the literature to Mr. Megronigle and told him to file it for consideration when a new procurement for security guards was conducted.¹³⁶

e. *Thefts of Documents: The Arrest of Charles Mount*

After renewal of the Old Dominion contract in May 1987, a second major incident occurred which threatened the security of the National Archives. On August 13, 1987, the Federal Bureau of Investigation (FBI) arrested Charles Merrill Mount for the theft and

attempted sale of documents taken from both the National Archives and the Library of Congress. The FBI arrested Mount a second time on August 18, 1987, when hundreds of additional documents from the National Archives were found in his possession. Mount was later convicted and imprisoned.¹³⁷

The Mount case differed from the attack on "The Charters of Freedom" because it was heavily publicized by the FBI and the national press, and because the extent of the thefts raised questions about the quality of security and management at the National Archives. On August 13, 1987, the FBI held a press conference to announce the arrest of Mount. The FBI Special Agent in charge of the Washington field office told the press: "Basically, this is an intrusion into the history of the country." Newspaper reports were carried virtually every day, often on the front page of *The Washington Post* and *The New York Times* from August 13th through September 1st.¹³⁸ Particular scrutiny was cast upon the research procedures, security, and record keeping at the National Archives. Publicly, the National Archives stated that Mount was treated no differently from any other researcher, and that it was improper to conduct physical searches of researchers leaving the building.¹³⁹

Records from the research room provided to the FBI established that Mount made 57 visits to the National Archives in the 37 days preceding his arrest.¹⁴⁰ While Mount may have been treated no differently when he completed his almost daily research, he displayed distinctive behavior inside the research room. Mount became known to the professional staff who assisted him as an eccentric individual who insisted on handling original documents and working alone.¹⁴¹ However, the security office was not notified to watch Mount more carefully until the day before his arrest, when National Archives officials were informed that documents in the possession of a Boston bookstore, and placed there for sale by Mount, may have belonged to the National Archives. As a result, Mount was not given any original documents on his August 12, 1987, visit.¹⁴²

The National Archives ultimately identified several hundred documents recovered by the FBI as missing from their collections and coinciding with Mount's dates of research. These ranged from Civil War documents and Abraham Lincoln records to the documents from the extradition case of Nicky Arnstein which were signed by Fanny Brice. Missing records also included the subject of Mount's well-known biography of artist John Singer Sargeant.¹⁴³

f. *Discussions With Vance International, Inc.*

The National Archives management responded to the discovery and publicity about the Mount thefts with a combination of intensive efforts including: a search to identify missing documents, compiling a record of Mount's visits and his access to original archival material, and an assessment of security operations.

As soon as Mount had been arrested, Mr. Megronigle believed that the National Archives "had a security crisis on our hands." He was particularly concerned over potential criticism from "congressional oversight committees" or "that GAO might begin an inquiry concerning lax security at the National Archives leading to the

theft of documents. I thought that we probably needed to examine the entire situation and see what needed to be done."¹⁴⁴

g. Telephone Discussion With Vance

On August 14, 1987, the day after the FBI announced its arrest of Mount, Mr. Megronigle gave Mr. Oberg the Vance promotional literature provided to him by Ms. Weiher in February. Mr. Megronigle instructed Mr. Oberg to set up a meeting at the National Archives with Vance representatives to discuss the company's capabilities. According to Mr. Oberg, he was provided with the literature about Vance, "Because we were looking to see if we could upgrade the quality of security."¹⁴⁵

Mr. Oberg followed Mr. Megronigle's instructions on that day. He called Vance and spoke with its Director of Marketing, James Levine. Mr. Oberg informed Mr. Levine of the desire of National Archives officials to meet with representatives from Vance. A meeting was scheduled for Tuesday, August 18, 1987. [See Appendix 7] In addition to scheduling the meeting, Mr. Oberg informed Mr. Levine that National Archives officials wanted to meet with Vance because of dissatisfaction with the existing security guard contractor, recent problems of theft of documents from the National Archives, and were interested in finding a higher quality security contractor. Mr. Oberg briefly described the National Archives' security guard needs as consisting of at least: twelve guard posts, and a supervisor during the day and three guard posts and a supervisor during night shifts for a total of 1,200 guard hours per week.¹⁴⁶

h. Meetings With Vance Representatives

On Tuesday, August 18, 1987, the scheduled meeting between National Archives officials and Vance representatives took place at the National Archives. The meeting was scheduled to begin at 9 a.m. in the office of Mr. Megronigle, but the Vance representatives met first with their agency contact, Mr. Oberg, in his office.¹⁴⁷

The meeting in Mr. Oberg's office included only Mr. Oberg and two Vance representatives, James Levine, Director of Marketing, and Daniel Thessen, Director of Operations. Mr. Oberg expressed his thanks to Vance for responding to the National Archives request for a meeting. According to one Vance representative present at the meeting, "he [Mr. Oberg] made it very clear that the security contract at the Archives was being put up for bid primarily due to a number of problems they had with the existing security contractor in there."¹⁴⁸ Mr. Oberg also indicated to the Vance representatives that a new RFP would be issued by the National Archives within a time frame which one Vance representative recalls as "possibly weeks."¹⁴⁹

Mr. Oberg went on to discuss the specific security needs of the National Archives, operational problems with the existing contractor, and requirements which would be added to the next security services contract.¹⁵⁰ Mr. Oberg stated that all guards would have to meet General Services Administration (GSA) training and certification requirements.¹⁵¹ Mr. Oberg identified the number of guards needed to staff the National Archives was a weekday force of twelve during the day and a weekend force of nine; and an additional three to four guards at night.¹⁵² Mr. Oberg went on to state

that no current guards were to stay on under the next contract. "Mr. Oberg made a statement that he would not feel comfortable in retaining any of the people that were currently on the contract."¹⁵³ [See Appendix 7]

Mr. Oberg next stated to Vance representatives Thessen and Levine that there was no adequate on-site supervision of the security guards. Thessen recalled in a sworn statement that Mr. Oberg felt that the contractor that was in at the time literally provided little or no on-site supervision and that the supervision was going to, on the new contract,—that was [to be] an entirely new phase."¹⁵⁴ Mr. Oberg complained about the uniform and appearance of the current security guards, and expressed that such requirements would be "stringently" enforced among the new guard force and that no old guards were to stay on under the new contract.¹⁵⁵ Mr. Oberg additionally stated that the National Archives would ask several companies to submit bids on a new contract.¹⁵⁶ These and other specifics divulged by Mr. Oberg to the Vance representatives Thessen and Levine were recorded in Mr. Thessen's notes taken at the August 18, 1987 meeting.¹⁵⁷ [See Appendix 7].

Following the meeting in Mr. Oberg's office, he escorted the Vance representatives to the office of Mr. Megronigle for a meeting that included the Deputy Archivist Claudine Weiher, Assistant Archivist for Administration James Megronigle, and Mr. Oberg. The meeting lasted approximately one hour.

The meeting entailed a discussion by the National Archives officials of their concerns, interests, and needs regarding a uniformed security guard force at the National Archives, repeating much of Mr. Oberg's earlier discussion with Vance representatives. All of the National Archives officials expressed dissatisfaction with the Old Dominion guards. The Vance representatives gave a presentation of their company's background, capabilities for the uniformed guard services, and management style. The discussion also included a response by Vance representatives to the ways its company would prevent the recurrence of problems the National Archives had experienced under its existing guard contract.

During the meeting, Deputy Archivist Weiher stated that the National Archives was dissatisfied with the performance of its existing security guard force. She provided examples of improper conduct by the guards, which ranged from verbal abuse of patrons, sleeping on duty, eating at their posts, and not showing up for duty.¹⁵⁸ The latter had occurred within one week of the meeting, perhaps the day before. National Archives officials arrived for work on a Monday morning and found themselves locked out of the building. From Sunday evening through early Monday morning there had been no guards in the building, and the last guard out on the previous shift had left the building locked and unmanned.¹⁵⁹

The description of problems also included a discussion of the Federal Bureau of Investigation's arrest the previous week of Charles Mount for the theft and attempted sale of numerous National Archives documents. Deputy Archivist Weiher stated that the National Archives had the authority to terminate the existing security services contract on an emergency basis and issue a new RFP as an "emergency procurement."¹⁶⁰

While it is unclear which National Archives official at the meetings was responsible for disclosures in addition to those discussed above, Vance representatives are certain that, at the close of the meeting, they understood the following to be a true reflection of the forthcoming events: the National Archives would issue a new RFP for a uniformed guard force within a short period of time, perhaps weeks; that the RFP would be issued to a small group of invited bidders; that Vance would likely be one of the invited bidders; and that the period of time for a response by bidders, and for the award of the contract itself, would be abbreviated in order to expedite the installation of a new security guard force.¹⁶¹

i. Vance Use of Presolicitation Disclosures

Following the meeting at the National Archives, the Vance representatives held a follow up discussion with several other company executives. This internal meeting took place at Vance headquarters within 3 days of the Tuesday meeting at the National Archives. It possibly occurred the next day. According to James Levine, Vance's Senior Vice President for Marketing: "I came back here [Vance headquarters] indicating that the meeting was successful and that I thought there would be an RFP coming out rather quickly and that we would have to start making decisions now whether we wanted to respond or not."¹⁶² In addition to Mr. Levine and Mr. Thessen, other Vance executives present at the meeting included: Mr. David Johnson, Executive Vice-President and Chief Operating Officer; and Mr. Joel Pollard, Comptroller.

The purpose of the meeting was to determine whether or not Vance should respond to the National Archives RFP when issued, whether the National Archives met the client profile criteria being pursued by Vance, and whether Vance was "logistically, administratively" capable of handling the National Archives contract.

At the meeting, the Vance officials discussed whether the contract offered the opportunity for the client profile which they were developing for "premier, prestigious types of locations and institutions."¹⁶³ Other factors in their consideration of whether to respond to the National Archives proposal included: "Manpower, operations, equipment, the training, the firearms training, the purchase of weapons, ammunition, uniforms, all the nuts and bolts that it takes to outfit a force and have them provide security."¹⁶⁴ In particular, the group discussed whether they could provide a uniformed guard force of more than one or two guards because: "It was something we [Vance] had not done before." They also discussed "a couple of areas that Mr. Oberg had stressed as being very, very important."¹⁶⁵ The latter included on-site supervision and 24 hour supervision of security guards. In addition, the Vance officials specifically discussed the fact conveyed to them in their meetings with Weiher, Megronigle, and Oberg, that the National Archives was "on a very fast track and one of the critical considerations for us was, as an organization, could we successfully meet their time frames."¹⁶⁶ At the conclusion of the meeting, a decision was made by the Vance executives to devote the necessary time to review and respond to the National Archives RFP.¹⁶⁷ Following the meeting, on August 20, 1987, Mr. Levine sent a handwritten letter to Mr. Megronigle at the National Archives expressing the interest

of Vance in becoming the National Archives' security contractor. [See Appendix 8]. Mr. Levine stated, in part:

"I know these have been tough times for you lately. The magnitude of security service related problems you have had to endure is staggering. I hope you will agree that Vance International is prepared to offer you immediate and long term solutions."¹⁶⁸

Last, following the Vance meeting, Vance executives instructed employee Thomas Pokusa, who had recently completed a course in federal procurement proposal writing, but who was then out of town, to return to Vance headquarters to receive the National Archives RFP and write the Vance Proposal.¹⁶⁹

j. Issuance of National Archives Request for Proposals

The National Archives began preparation of its RFP no earlier than September 1st; terminated the Old Dominion contract on September 3rd; and issued the RFP on September 4th under a declaration of "emergency conditions." It was a 3-day project that entailed completing all the legal and procurement work for the premature termination of the Old Dominion contract and the preparation and issuance of the new RFP under abbreviated emergency procedures. Despite Mr. Megronigle's earlier reluctance to do so, he attributed the change of mind to the discovery during his lunch hour that the Department of Justice had recently hired Pinkerton to replace its former security guards. Within 24 hours, Mr. Megronigle asked Mr. Oberg to obtain a copy of the Pinkerton contract with the Justice Department, and plans were made to use the contract as a model for an new RFP to obtain a higher quality of guards. Mr. Oberg was made responsible for identifying the technical and security requirements of the RFP.

The National Archives invited four specific bidders. Pinkerton was selected because it was their contract that was the basis for the RFP. Vance was selected following the meeting with National Archives officials. Wackenhut and Wells Fargo were selected after Mr. Megronigle instructed his Procurement Branch staff to find additional companies with little more guidance. He believes his staff merely looked in the Yellow Pages, where they found Wackenhut and Wells Fargo in alphabetical order. The criteria were that they be companies with a presence in the Washington metropolitan area.¹⁷⁰

The response deadline was 14 days later on September 18, 1987. The final contract would be awarded as the result of a negotiated bidding process. The new contractor would have to be ready to begin work on midnight October 5, 1987, when the Old Dominion responsibilities ended. By September 18, 1987, only two bids were received, one from Pinkerton and another from Vance.

k. The Vance Bid

Unlike Pinkerton, which had extensive experience and existing security guard contracts with the federal government, Vance had neither. Vance was only 3 years old as a company, and had only responded once before, unsuccessfully, to a federal RFP from the

U.S. Marshall's Service. The proposal submitted to the National Archives was also the first for its principal drafter, Thomas Pokusa, who had just completed a course on the process at the local community college.

Following Mr. Pokusa's initial review of the National Archives RFP, he met with Mr. Levine and Mr. Thessen and discussed their meeting with National Archives officials. Mr. Pokusa undertook to satisfy criteria disclosed by National Archives officials and conveyed to him by Mr. Levine and Mr. Thessen. This included: "That we would have to staff it with all new people. I remember that was a major concern . . . If you are going to bid on something, you have to be able to produce the staffing. One of my questions was how many of the old security force can we retain?"¹⁷¹ Their answer was none . . . That came from the meeting."¹⁷¹ Mr. Pokusa also assessed the task of developing an entirely new team of security guards for the National Archives: "It was very difficult. It took a lot of recruitment."¹⁷² In addition, Mr. Pokusa carefully addressed the need for "on-site supervision" of security guards in writing the Vance proposal, another important factor which he understood was stressed to Vance representatives by National Archives officials.¹⁷³

1. *The Award of the Contract To Vance*

The National Archives reached its decision to award its contract to Vance following two weeks of intensive review and negotiated bidding with representatives of Pinkerton and Vance. The negotiation sessions began shortly after the bids were received and provided an initial review by the Technical Evaluation Committee which was chaired by Lawrence Oberg.¹⁷⁴ The negotiations continued through September 29, 1987. However, despite the emergency nature of the work, and Mr. Oberg's role as Chairperson of the Technical Evaluation Committee, following his initial review of proposals and participation in one negotiation session, he went to Las Vegas for a week to attend a convention for an industrial security association. While at the convention, Mr. Oberg visited the Pinkerton convention booth and strongly criticized the company for its response to the National Archives RFP.¹⁷⁵

While the Technical Evaluation Committee, and other National Archives officials who reviewed the bids, considered a number of factors in determining which contractor would provide the highest quality service. However, the fact that Pinkerton proposed to incorporate many of the existing guard force into the new contract was a "major" and "primary" reason for the rejection of its bid. Vance expressly provided for hiring new guards for both its phase-in and permanent security force. Another prominent factor favoring the Vance proposal was its satisfaction of on-site supervision and back-up security needs. These factors were among the principal recommendations and explanations provided by Mr. Oberg in the October 1, 1987 "Recommendations of the Technical Evaluation Committee." These recommendations were provided to Mr. Megronigle, who signed and adopted them. On October 2, 1987, the National Archives contract was awarded to Vance International, Inc.¹⁷⁶

m. FBI Criminal Probe of National Archives Procurement Award

Certain activities related to the procurement award to Vance were part of a 1989 FBI probe. Prosecution was declined in early 1990 "due to a lack of evidence to support a criminal prosecution against the captioned subjects."¹⁷⁷ The FBI stated in its closing memorandum that Lawrence Oberg and James Megronigle denied "telling VANCE INTERNATIONAL officials of their intentions to hire another security company. Although the investigation found evidence to the contrary, OBERG denied that he provided VANCE INTERNATIONAL officials with information which would be useful in preparing their VANCE INTERNATIONAL'S bid."¹⁷⁸ [See Appendix 9]

This case was also referred to the President's Council on Integrity and Efficiency (PCIE) for review of Inspector General Lawrence Oberg by its Allegations Review Subcommittee. However, the Committee learned during its investigation, as well as through its oversight of the PCIE and the latter Subcommittee in 1991 and 1992, that in this case, the Subcommittee chairman, an FBI official, declined to review or investigate the case. Instead, the chairman relied exclusively on the FBI's own declination for criminal prosecution without interviewing the FBI agent who handled the case and without exploring the discrepancies in testimony highlighted in the agent's closing memorandum. This was wrong. The Subcommittee relied on standards of criminal law, while its actual function is to investigate and prevent abuses of integrity and independence by Inspectors General. This allows for a broader analysis of all relevant facts in a case. Therefore, no review of Inspector General Lawrence Oberg was conducted by the PCIE. The Committee's own investigation has, in important respects, gone beyond the FBI inquiry and is based on additional information, documents, records, and sworn statements. The Committee's report, therefore, should be utilized in any future review of the National Archives officials, and their conduct, as recommended by the Committee.

CONCLUSIONS

The Committee found that the management of the National Archives and Records Administration has, during the years 1989-1992, reflected a pattern of expedience and control which has been regularly substituted for sound management. The agency's independence has been confused by certain officials as a license for complete freedom.

This has occurred, in part, because the Archivist of the United States, Dr. Don Wilson, has removed himself unduly from management responsibilities. In what may be called "the case of the absentee Archivist,"¹⁷⁹ Archivist Wilson bears primary responsibility for the myriad of expedient and short sighted actions raising questions of compliance with laws, regulations, and standards of conduct detailed in this report.

The Committee's recommendations reflect the need to restore the National Archives to proper management levels, establish the basis for appropriate administrative and disciplinary action, and to do so within the existing governing framework. These recommendations entail a review of the Archivist by the President; a review of the Inspector General by the Archivist; a review of other National Archives officials and their conduct by the Archivist; a review of the Inspector General by the President's Council on Integrity and Efficiency; and a recommendation that the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency issue a set of standards for best practices in the Inspectors General community.

Special mention must be made about the recommendation that the Archivist review the Inspector General of the National Archives and Records Administration. In establishing the Inspectors General of "designated Federal entities" including the National Archives, the Congress specifically chose to create a different framework for appointment and removal of these Inspectors General. In the smaller agencies, the authority for appointment and removal rests with the agency head. The law also prohibits the Inspectors General of these agencies from reporting to anyone other than the agency head. However, the law maintains an important balance between the powers of appointment, removal, and reporting without impinging on the independence of the Office of Inspector General.

Ordinarily, a recommendation to the agency head to review or investigate the Inspector General might appear to tip the balance away from preserving this independence. However, agency heads are not authorized to close their eyes to abuse in the Office of Inspector General. Further, under the law it is the agency head who is responsible for acting, if necessary, to remove the Inspector General. Finally, as the report makes clear, virtually all the questions

surrounding the Inspector General's conduct involves other high ranking National Archives officials. Therefore, in this unusual case, it is necessary for the agency head to conduct an inquiry into the activities of the Inspector General.

The Committee makes the following recommendations:

First, the Archivist of the United States should act without delay to review the conduct of Inspector General Lawrence Oberg with regard to, but not limited to, the activities detailed in this report and concerning his compliance with: the Inspector General Act, as amended (5 U.S.C. Appendix 3, Section 1 et seq); 18 U.S.C. Section 1001; 6 D.C. Code Section 2311; 41 C.F.R. Sections 105-735.201, 202, 207; and other Federal regulations and standards of conduct. The Archivist should review the Inspector General's activities giving special attention to his:

(a) Reporting to, supervision by, and taking assignments from agency officials other than the agency head;

(b) Mishandling of complaints and cases filed with the Office of Inspector General including his: failure to recuse himself from cases involving an apparent conflict of interest; repeated inappropriate referral of such cases to the Office of Special Counsel; closing such cases himself; referring such cases to agency management;

(c) Providing confidential information and identities of employees who filed complaints with the Office of Inspector General to agency management;

(d) Engaging in agency program operations;

(e) False statements made under oath concerning his involvement in agency program operations;

(f) Personal possession of National Archives property;

(g) Personal possession of an unregistered firearm;

(h) Use of his office and staff for personal business; and

(i) Involvement in and disclosure of valuable inside information during the 1987 procurement award to Vance International, Inc.

Second, the Archivist of the United States should act without delay to review the conduct of other agency officials identified in this report, with regard to, but not limited to, the activities detailed in this report. This includes the actions of agency officials involving document destruction, and interference with and delay of the Committee's investigation as detailed in Part One; the selection and management of the Inspector General as detailed in Part Two and Part Three; and involvement in the procurement action detailed in Part Four.

Third, the President of the United States should undertake a review of actions of the Archivist of the United States in connection

with the activities detailed in this report, including but not limited to questions concerning compliance with the Inspector General Act, as amended, (5 U.S.C. App. 3, Section 1 et seq.) and the exercise of administrative and management responsibilities involving:

(a) The selection of the Inspector General;

(b) The conduct of agency officials, including false statements, during the selection of the Inspector General;

(c) The management and supervision of the Inspector General by agency officials other than the agency head;

(d) The conduct of the Inspector General.

(e) The interference with and delay of a congressional investigation, including the destruction of documents and the possible obstruction of Congress;

(f) The presolicitation disclosure of inside information during contract proceedings by National Archives officials; and

(g) The absence of administrative or disciplinary action against employees for actions raising questions about compliance with laws, regulations, or standards of conduct.

Fourth, the President's Council on Integrity and Efficiency should act without delay to investigate the conduct of National Archives Inspector General Lawrence Oberg regarding the activities detailed in this report, including, but not limited to questions about Mr. Oberg's compliance with the Inspector General Act (as amended), other laws, and official standards of conduct concerning:

(a) Reporting to, supervision by, and taking assignments from agency officials other than the agency head;

(b) Mishandling of complaints and cases filed with the Office of Inspector General including his: failure to recuse himself from cases involving an apparent conflict of interest; repeated inappropriate referral of such cases to the Office of Special Counsel; closing such cases himself; referring such cases to agency management;

(c) Providing confidential information and identities of employees who filed complaints with the Office of Inspector General to agency management;

(d) Engaging in agency program operations;

(e) Veracity of statements made under oath concerning his involvement in agency program operations;

(f) Personal possession of National Archives property;

(g) Personal possession of an unregistered firearm;

(h) Use of his office and staff for personal business; and

(i) Involvement in and disclosure of valuable inside information during the 1987 procurement award to Vance International, Inc.

Fifth, the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency should act expeditiously to adopt standards for best practices such as those included in the "Inspectors General In Designated Federal Entities: Key Statutory Provisions And Implementing Guidance."

END NOTES

¹ Inspector General Amendments Act. Public Law 100-504. October 18, 1988. 102 Stat. 2515.

² 41 CFR Ch. 105 202(c)(2) "Using Inside Information." Applicable to National Archives employees at the time of the procurement action, the federal contracting regulations read:

"2. Using Inside Information. GSA personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their GSA positions."

³ 18 U.S.C. 1505.

⁴ Inspector General Amendments Act. October 18, 1988. 5 U.S.C. Appendix 8E(d).

⁵ Inspector General Act of 1978. 5 U.S.C. Section 3(a).

⁶ Inspector General Act of 1978. 5 U.S.C. Section 7(b). Inspector General Amendments Act. October 18, 1988. 5 U.S.C. Appendix 8E(d).

⁷ *Ibid* at 5 U.S.C. Appendix 8E(b).

⁸ Letter to Archivist Don Wilson from Senator John Glenn, Chairman, Committee on Governmental Affairs, and Senator Herb Kohl, Chairman, Subcommittee on Government Information and Regulation. July 3, 1991. Page 3.

⁹ Rappold Deposition, page 19, lines 1-7. Assistant Archivist Megronigle telephoned seeking whereabouts of file containing documents to be provided to the Committee.

¹⁰ Deposition of Wilma J. Kriviski. August 20, 1991. Page 21, lines 12-17. Deposition of Steven G. Rappold. August 20, 1991. Page 12, lines 12-18; Page 13, lines 24-5; Page 14, lines 1, 18-25; Page 15, lines 1-2.

¹¹ Kriviski Deposition at page 42, lines 8-12, 22-24. In addition to the second file which Personnel Director Kriviski confirms existed and was known to her but not disclosed on the day of the Committee visit to her office, another file also existed and was not disclosed to the Committee which contained general background information used by the Office of Personal in announcing the vacancy and screening applicants for referral to the Archivist.

¹² Rappold Deposition, pages 16-17.

¹³ *Ibid* at page 16, line 22.

¹⁴ *Ibid* at page 17, line 11-13.

¹⁵ *Ibid* at page 48, lines 3-5.

¹⁶ Kriviski Deposition, page 105, lines 4-7.

¹⁷ *Ibid* at page 103, lines 6-10.

¹⁸ *Ibid* at page 23, lines 3-16.

¹⁹ Kriviski Deposition, page 18, line 5.

²⁰ Rappold Deposition, page 19, lines 1-7.

²¹ Kriviski Deposition, page 31, lines 2-5.

COMMITTEE: And so this draft letter with the handwritten note was in the material that came from Saint Louis?

KRIVISKI: Yes, it was.

²² Rappold Deposition, page 43, lines 16-19, 25; page 44, line 1.

²³ Rappold Deposition at page 14, lines 5-7; page 15, lines 16-18, lines 23-25.

²⁴ *Ibid* at page 23, lines 21-25; page 24, lines 1-5.

²⁵ Kriviski Deposition, page 29, lines 13-16.

²⁶ *Ibid* at page 32, lines 3-6.

²⁷ *Id.*, lines 16-17.

²⁸ Rappold Deposition, page 39, lines 1-13.

²⁹ *Ibid* at page 41, lines 11-20.

³⁰ Kriviski Deposition, page 28, lines 11-12.

³¹ *Ibid* at page 29, lines 13-16.

³² Kriviski Deposition, page 121, line 9.

- ⁸³ 18 U.S.C. 1505.
- ⁸⁴ National Archives and Records Administration Personnel Manual. Chapter 752. Disciplinary and Adverse Actions. Appendix 752A-4. June 3, 1989.
- ⁸⁵ Inspector General Act. 5 U.S.C. Section 2.
- ⁸⁶ Inspector General Act. 5 U.S.C. Section 2, "Purpose and establishment of Offices of Inspector General; departments and agencies involved." "In order to create independent and objective units." See also, Section 7(b), "Complaints by employees, disclosure of identity, reprisals."
- ⁸⁷ Letter from Inspector General Lawrence Oberg, National Archives, to Committee. June 10, 1991.
- ⁸⁸ Memorandum entitled "Schofield-type Revolver, Smith & Wesson," by Michael J. Kurtz, Deputy Assistant Archivist. August 23, 1991.
- ⁸⁹ Deposition of Lawrence Oberg, pages 48-53. See also, Memorandum entitled "Schofield-type Revolver, Smith & Wesson," by Michael J. Kurtz, Deputy Assistant Archivist, confirming return of revolver from "Larry Oberg, on August 16, 1991." August 23, 1991.
- ⁹⁰ *Ibid* at Page 52, lines 22-24. See also 6 D.C. Code 2311.
- ⁹¹ Oberg Deposition, page 50, lines 15-16. Deposition of Daniel Thessen. Vance International, Inc. January 23, 1992. Pages 66-68.
- ⁹² Oberg Deposition, page 50, lines 23-25; page 51, line 1, page 52, lines 2-4.
- ⁹³ Memorandum entitled "Schofield-type Revolver, Smith & Wesson," by Michael J. Kurtz, Deputy Assistant Archivist, confirming return of revolver from "Larry Oberg, on August 16, 1991." August 23, 1991.
- ⁹⁴ *Ibid* at pages 54-56.
- ⁹⁵ National Archives Personnel Manual. Chapter 752. Personnel 300, CHGE 1, December 19, 1986. Penalty Guide. Page App. 752A-3
- "9. Neglect of duty: Loafing, deliberate failure to be at work on assigned task, unreasonable delay or failure in carrying out instructions, conducting personal affairs on official time, or careless workmanship resulting in waste or delay. Also may include negligence which leads to improper accounting for government funds or funding documents or devices."
- ⁹⁶ *Ibid*.
- "12. Unauthorized use, removal, or possession of Government property, funds, services, supplies or materials, including use of, or permitting the improper use of, government charge cards, Accounting Control Transaction (ACT) numbers, or other obligating forms or devices, or the property of other employees."
- ⁹⁷ *Ibid* at page App. 752A-4.
- "16. Knowing and willful use of public office for private gain."
- "17. Misconduct, whether or not in violation of a criminal statute, which impairs job performance or trustworthiness of the employee or otherwise impairs the ability of a NARA unit to perform its mission."
- ⁹⁸ "Summary of EEO Complaints filed by Administrative Services Division Employees Prior to April 16, 1989." Document provided to the Committee by the National Archives. August 20, 1991.
- ⁹⁹ Oberg Deposition, page 41, lines 16-25; page 42, lines 1-3.
- ¹⁰⁰ *Ibid* at page 45, lines 13-17.
- ¹⁰¹ *Ibid* at page 42, lines 13-24; and page 45, lines 22-25.
- ¹⁰² *Ibid* at page 44, lines 7-16; page 47, lines 13-17.
- ¹⁰³ Section 8(E)(d) of the Inspector General Act Amendments of 1988 reads in pertinent part:
- "(d) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision, by any other officer or employee of such designated Federal entity."
- ¹⁰⁴ Oberg Deposition, page 47, lines 1-4.
- ¹⁰⁵ Inspector General Amendments Act of 1988. 5 U.S.C. Appendix 8E(d).
- ¹⁰⁶ Oberg Deposition, pages 47-48.
- ¹⁰⁷ Memorandum to the file. Carl Salesky. Investigator. Office of Inspector General. National Archives and Records Administration.
- ¹⁰⁸ Oberg Deposition, page 36, lines 7-8.
- ¹⁰⁹ Memorandum RE: Recommendations for Closure. McKoy, Elaine: OSC File No. MA-91-0441. U.S. Office of Special Counsel. January 28, 1991.
- ¹¹⁰ Oberg Deposition, page 36, line 25; page 37, lines 1-3.

- ¹¹¹ Memorandum to the file. Carl Salesky. Investigator. Office of Inspector General. National Archives and Records Administration.
- ¹¹² Inspector General Act. 5 U.S.C. App. 3. Section 7(b).
- ¹¹³ Inspector General Amendments Act of 1988. Public Law 100-504. October 18, 1988. 102 Stat. 2523, Section 8(E)(b).
- ¹¹⁴ Oberg Deposition, page 16 lines 1-3. See also, Oberg travel records.
- ¹¹⁵ *Ibid* at page 13, lines 16-21.
- ¹¹⁶ *Ibid* at page 14, lines 1-5.
- ¹¹⁷ *Ibid* at page 27, lines 14-25.
- ¹¹⁸ *Ibid* at page 27, lines 1-10.
- ¹¹⁹ *Ibid* at page 20, lines 10-18.
- ¹²⁰ *Ibid* at page 20, lines 19-25; page 21, lines 1-7.
- ¹²¹ *Ibid* at page 25, lines 15-25; page 26, lines 1-13.
- ¹²² Letter from Archivist Don Wilson to Committee. June 7, 1991.
- ¹²³ Deposition of Stephen E. Hannestad, Director, Systems Acquisition and Systems Management Division, National Archives and Records Administration. February 4, 1992. Page 11, lines 5-7, 18-22.
- ¹²⁴ Memorandum to file. Steven L. Katz, Counsel, Committee on Governmental Affairs. January 30, 1992. Telephone interview with Richard Roderick Soubers, January 29, 1992.
- ¹²⁵ Hannestad Deposition, page 24, lines 15-25; page 25, lines 1-5.
- ¹²⁶ Memorandum to the file. Steven L. Katz, Counsel, Committee on Governmental Affairs. January 30, 1992. Dr. Ralph Bledsoe was interviewed by telephone at his office at the Ronald Reagan Presidential Library at 7 p.m. E.S.T. on January 29, 1992, by Steven L. Katz, Counsel, Committee on Governmental Affairs.
- ¹²⁷ Memorandum to the file. Steven L. Katz, Counsel, Committee on Governmental Affairs. January 30, 1992. Richard Roderick Soubers was interviewed by telephone by Steven L. Katz, Counsel, Committee on Governmental Affairs. Mr. Soubers was interviewed at 9:30 E.S.T. on January 29, 1992.
- ¹²⁸ *Id*.
- ¹²⁹ Hannestad Deposition, page 5, lines 22-23.
- ¹³⁰ *Ibid* at page 14, lines 23-25.
- ¹³¹ *Ibid* at page 14, line 21.
- ¹³² *Ibid* at page 14, lines 25; page 15, line 1.
- ¹³³ *Ibid* at page 17, lines 21-24.
- ¹³⁴ *Ibid* at page 19, lines 7-25; page 20, lines 1-18.
- ¹³⁵ See note 31.
- ¹³⁶ Letter from Christopher M. Runkel, Attorney-Advisor, Legal Services Staff, National Archives and Records Administration. March 6, 1992. "Re: Committee's Document Request of February 5, 1992." Pages 1, 2.
- ¹³⁷ See C & M Transfer Company documents.
- ¹³⁸ Letter from Christopher M. Runkel, Attorney-Advisor, Legal Services Staff, National Archives and Records Administration. March 6, 1992. "Re: Committee's Document Request of February 5, 1992."
- ¹³⁹ Inspector General Amendments Act. Public Law 100-504. October 18, 1988. 102 Stat. 2523, Sections 8(E)(b) and (d).
- ¹⁴⁰ 18 U.S.C. 1001. Oberg Deposition at page 25 lines 15-21. "I probably moved a dolly, as we have described, down a hallway or something. But as far as giving orders or in the management end of it, no, I was not."
- ¹⁴¹ *Supra* n.1. See also "Inspector General Act Amendments of 1987." Report of the Committee on Governmental Affairs. S. Rpt. 100-150. August 7, 1987. Page 42.
- ¹⁴² *Ibid* at page 25.
- ¹⁴³ Document set provided to the Committee following a request for additional information on the National Archives plans for establishing the Office of Inspector General. None of the materials, however, contain a date which or other information which would document the originating date or author.
- ¹⁴⁴ Deposition of Claudine Weiher, Deputy Archivist, February 4, 1992. Page 18, lines 1-8.
- ¹⁴⁵ Office of Management and Budget Guidelines. January 4, 1989.
- ¹⁴⁶ Routing and Transmittal Slip. March 1, 1989.
- ¹⁴⁷ The Committee reviewed the travel records of the Archivist from December 9, 1987 through May 4, 1992. Also see May 4, 1992 letter from National Archives General Counsel Gary Brooks to Committee, accompanying records provided to Committee. These records indicate that the Archivist was out of his office on travel, accounted for only where per diem expenses were paid by the government, as follows:
- December 9, 1987 to September 30, 1988: 58 days
October 1, 1988 to September 30, 1989: 40 days

October 1, 1989 to September 30, 1990: 79 days
 October 1, 1990 to September 30, 1991: 78 days
 October 1, 1991 to May 4, 1992: 43 days

⁹⁸ See, SF-171s of all applicants.

⁹⁹ Weiher Deposition, page 24, lines 2-14.

¹⁰⁰ Megronigle Deposition, page 38, lines 22-25.

¹⁰¹ "Supervisory Appraisal of Demonstrated Performance or Potential." Applicant: Lawrence Oberg. Position: Inspector General. Appraisers Signature: James Megronigle. Date: March 15, 1989.

¹⁰² Weiher Deposition, pages 27-30. Megronigle Deposition, pages 16-22, 39.

¹⁰³ Weiher Deposition, page 30, line 9.

¹⁰⁴ *Ibid* at page 10, line 25; page 11, lines 1-3.

¹⁰⁵ *Ibid*.

¹⁰⁶ *Ibid* at page 11, lines 16-22; page 13, lines 10-15.

¹⁰⁷ *Ibid* at page 14, lines 1-5.

¹⁰⁸ Megronigle Deposition, page 17, lines 23-25; page 18, lines 1-3.

¹⁰⁹ *Ibid*.

¹¹⁰ *Ibid* at page 21, lines 3-8.

¹¹¹ *Ibid* at page 21, lines 9-23.

¹¹² 18 U.S.C. 1001.

¹¹³ *Ibid* at page 41, lines 2-8. See also, list of EEO complaints against Lawrence Oberg as of April 17, 1989.

¹¹⁴ Letter from William Sessions, Director, Federal Bureau of Investigation, to Senator John Glenn, Chairman, Committee on Governmental Affairs. June 6, 1992.

¹¹⁵ Letter from Archivist Don Wilson to Mr. Thomas Carl, Government Fraud Unit, Federal Bureau of Investigation. January 3, 1992.

¹¹⁶ Letter from William Sessions, Director, Federal Bureau of Investigation, to Senator John Glenn, Chairman, Committee on Governmental Affairs. June 6, 1992.

¹¹⁷ "Ford's son-in-law wins Archives bid," *The Washington Times*, December 28, 1989. C1. "FBI probes bid process at Archives," *The Washington Times*, January 6, 1989. C1.

¹¹⁸ Weiher Deposition, page 24, lines 15-21.

¹¹⁹ Weiher Deposition, pages 4, 5.

¹²⁰ Megronigle Deposition, pages 4-7.

"Mr. Megronigle worked for the General Services Administration from 1971-1975. He then worked for the National Archives from 1975-1980. He returned to GSA until 1982, but continued to have budgetary responsibility for the National Archives. He returned to the National Archives in 1982, was named Acting Assistant Archivist for Administration in 1986. That title was made permanent in 1988. He has served at the National Archives for 15 years."

¹²¹ Oberg Deposition, pages 6, 7.

"Mr. Oberg first served at GSA as a General Protection Specialist, and then served for approximately 8 years as a criminal investigator in the GSA Office of Audits and Investigations. He left the federal government to become Director of Security at St. Elizabeth's Hospital. He served as the Director of Administrative Services at the National Archives from 1981-1989 when he was named Inspector General."

¹²² Megronigle Deposition, pages 8-10.

¹²³ *Ibid* at page 92, lines 21-22.

¹²⁴ "Findings And Determination" National Archives and Records Administration. September 3, 1987. "Justification For Other Than Full And Open Competition," National Archives and Records Administration. September 3, 1987.

¹²⁵ "Bidders List, Security Guard Services," National Archives and Records Administration.

¹²⁶ "Justification For Contract Negotiation Without Field Pricing Support," National Archives and Records Administration; Exhibit 5, "Justification For Award Of Contract Without OFCCP EEO Pre-Award Clearance," National Archives and Records Administration. Exhibit 6, Letter from National Archives and Records Administration to Department of Labor concerning postaward equal opportunity compliance review and clearance for contract award to Vance International, Inc. October 2, 1987.

¹²⁷ Oberg Deposition, page 61, lines 4-24. Weiher Deposition, page 57, line 6.

¹²⁸ Hannestad Deposition, page 24, lines 17-20.

¹²⁹ Megronigle Deposition, page 61, lines 20-21.

¹³⁰ *Ibid* at pages 63-64.

¹³¹ Megronigle Deposition, pages 61, 62.

¹³² Megronigle Deposition, page 64, lines 7-10.

Claudine Weiher Deposition. Committee on Governmental Affairs. United States Senate. February 4, 1992. Page 52 (line 7) pages 53-55.

Lawrence Oberg Deposition. Committee on Governmental Affairs. United States Senate. January 28, 1992. Page 60 (line 8-13), page 90 (lines 4-5). "I was unhappy with every contract guard force that we had in there, including Vance." Page 90.

¹³³ *Ibid* at page 64, lines 17-25; page 65, lines 1-10; page 67, lines 6-9.

¹³⁴ *Ibid* at page 67, lines 22, 23. Weiher Deposition, page 52, lines 17, 18.

¹³⁵ Megronigle Deposition, page 65, lines 11-24; page 66, lines 1, 10, 11, 17-22.

¹³⁶ Claudine Weiher testimony. Federal Bureau of Investigation. May 2, 1989.

Weiher Deposition, page 54, lines 7-25; page 55 lines 1-10.

¹³⁷ "D.C. Author Arrested With Rare Letters," *The Washington Post*. August 14, 1987. A1.

"D.C. Author Arrested 2nd Time." *The Washington Post*. August 19, 1987. C1.

"Art Historian Indicted In Stolen Letters Case." *The New York Times*. September 20, 1987. A85.

"Art Scholar Gets 3 Years in Stolen Papers Case." *The New York Times*. May 24, 1988. C18.

"Art Scholar Gets Five Years in Fraud; Unrepentant Charles Mount Convicted in Stolen Document Case." *The Washington Post*. March 31, 1989. A17.

¹³⁸ "Portrait Painter is Accused in Theft of Rare Documents," *The New York Times*. August 14, 1987. A10.

"D.C. Author Arrested With Rare Letters," *The Washington Post*. August 14, 1987. A1.

"FBI Finds New Cache of Rare Papers; Arrested Author's Bank Box Searched." *The Washington Post*. August 15, 1987. A1.

"The Fall From Grace Of an Artist, Author; Trail of Debts, Lawsuits Ends at Jail Cell." *The Washington Post*. August 16, 1987. B1.

"Civil War Papers Found in Safe Box." *The New York Times*. August 16, 1987. A27.

"Author Linked To More Documents; Cash; Handgun, 194 Historical Papers Seized." *The Washington Post*. August 18, 1987. B1.

"Lincoln Documents Recovered." *The New York Times*. August 18, 1987. C13.

"D.C. Author Arrested 2nd Time." *The Washington Post*. August 19, 1987. C1.

"Art Scholar Seized for 2d Time in Week In Documents Theft," *The New York Times*. August 19, 1987. A1.

"Rare Documents' Vulnerability Comes to Light." *The Washington Post*. August 20, 1987. D1.

"Library Missing Eight James Letters." *The New York Times*. August 20, 1987. C28.

"Letter-Theft Suspect's Serene Self-Portrait; I'm Not an Eccentric, Everyone Else Is," Charles Mount Says." *The Washington Post*. August 21, 1987.

"Art Scholar Asserts Innocence in Letters Case." *The New York Times*. August 21, 1987.

"Addressees Well-Known." *The Washington Post*. August 23, 1987. D7.

"Rare Papers Case: Latest Turn in Scholar's Career." *The New York Times*. August 23, 1987. A28.

"Tracing True Owner; Markings Identify Letters, Dealer Says." *The Washington Post*. August 28, 1987. B1.

"Jury to Get Mount Case." *The Washington Post*. August 29, 1987. B5.

"Mount Was Exempt From Routine Inspections, Library Police Say." *The Washington Post*. September 1, 1987. B1.

"Historian Mount Indicted In Stolen Documents Case; Conviction Carries Term of Up to 235 Years." *The Washington Post*. September 18, 1987. C3.

¹³⁹ "Rare Documents' Vulnerability Comes To Light." *The Washington Post*. August 20, 1987. D1.

¹⁴⁰ "Records Examined By Charles Merrill Mount." National Archives. August 24, 1987.

¹⁴¹ Federal Bureau of Investigation. Interview with Michael P. Music, Archivist for the Military Reference Branch, National Archives. August 31, 1987.

"MUSIC said that Mount was a very unusual researcher who seems to be interested in original manuscript documents and not the authoritative items available in the microfilm or research books already published. He stated that MOUNT consistently asked for blocks of records that referred to battles, cam-

paigns, generals, and other items of extremely broad interest. MUSIC normally was able to assist researchers with very clear ideas as to what items they needed to look at for research purposes, but MOUNT'S case was different in that he appeared to want to view or hold the artifacts personally in his hand."

¹⁴² *Ibid.*

¹⁴³ "Records Examined By Charles Merrill Mount." National Archives. August 24, 1987.

¹⁴⁴ Megronigle Deposition, page 69, lines 8-14.

¹⁴⁵ Oberg Deposition, page, 73, lines 13-25; page 74, lines 23-24.

¹⁴⁶ James Levine testimony. Federal Bureau of Investigation. January 9, 1990.

Federal Bureau of Investigation. Letterhead Memorandum (LHM). January 31, 1990. Page 3.

"The FBI's LHM served to summarize its decision to close a year long investigation of whether criminal fraud was involved in the contract award to Vance. The investigating agency wrote the LHM, concluded that no funds, gratuities, or favors exchanged hands, however, Mr. Levine's testimony contradicted a denial by Mr. Oberg to the FBI that he disclosed the National Archives intent or desire to replace the existing security contractor in his August 14, 1987 telephone conversation with Mr. Levine."

James Levine Deposition. February 25, 1992. Page 9 (lines 16-20), page 10 (lines 1-4).

¹⁴⁷ Megronigle Deposition, page 81, lines 15-25.

¹⁴⁸ Thessen Deposition. Regarding termination of existing security contractor, See page 19, lines 22-25; page 20, line 1; page 53, lines 3-7.

¹⁴⁹ *Ibid.* Regarding termination of existing security contractor, See page 19, lines 22-25; page 20, line 1; page 53, lines 3-7. Regarding the time frame for issuance of a new RFP, See page 28 lines 24-25; page 29, lines 5-7.

¹⁵⁰ Daniel Thessen. Handwritten notes taken during meeting with Mr. Oberg, recorded in Mr. Thessen's "Day-Timer" notebook. Additional references are cited in footnotes to deposition statements.

¹⁵¹ Thessen Deposition, page 21, lines 13-20. Mr. Thessen stated that he believed the GSA training and certification standards were a "contract requirement."

¹⁵² Oberg Deposition, page 87, lines 11-16. Mr. Oberg recalls detailed discussion of guard posts with Vance representatives at meeting attended by Ms. Weiher and Mr. Megronigle, but does not recall or remember whether he provided the information at the meeting.

¹⁵³ Thessen Deposition, pages 22, line 35; page 23, lines 1,2; page 70, lines 6-11; page 71, lines 18-20.

¹⁵⁴ Thessen Deposition, page 23, lines 16-21.

Oberg Deposition, page 90, lines 6-17.

¹⁵⁵ Oberg Deposition, page 90, lines 18-21.

¹⁵⁶ Thessen Deposition, page 27, lines 6-8, page 28, lines 19-20.

¹⁵⁷ Thessen notes from meeting. See Appendix.

¹⁵⁸ Megronigle Deposition, page 75, lines 20-23.

¹⁵⁹ Levine Deposition, page 15, lines 6-13. This incident occurred within one week of the August 13, 1987 arrest of Charles Mount, and possibly the day before the second arrest of Charles Mount and the meeting with Vance officials on August 18, 1987.

¹⁶⁰ *Ibid* at page 14, lines 3,4,11,12.

¹⁶¹ Thessen Deposition; page 33, lines 20-24.

Levine Deposition, page 22, lines 22-25; page 23, lines 1-12.

David P. Johnson Deposition. Vance International, Inc. February 25, 1992. Page 4, lines 17-25. "... our Sales and Marketing people [Levine] had developed knowledge that the Archives was interested in replacing its existing security service because it was, frankly, falling apart on them. So they were moving into what we understood to be an emergency situation, which again as I understood it, allowed them some latitude from the traditional RFP process." See also page 5, lines 1-8.

James Megronigle testimony. Federal Bureau of Investigation. 1989.

"Megronigle states that he expressed his dissatisfaction with the Old Dominion guards, and while he did not tell the Vance representatives that the Old Dominion contract would be terminated, they could have inferred it from his comments."

¹⁶² Levine Deposition, page 22, lines 8-12; page 23, lines 2-5, 13-20.

¹⁶³ *Ibid* at page 34, lines 11,12.

¹⁶⁴ *Ibid* at page 34, lines 15-18.

¹⁶⁵ *Ibid* at page 36, lines 5-15.

¹⁶⁶ David Johnson Deposition, Vance International, Inc. Page 6, lines 7-11.

¹⁶⁷ *Ibid* at page 8, lines 1-4.

¹⁶⁸ Letter from James Levine, Vance International, to James Megronigle, National Archives and Records Administration. August 20, 1987.

¹⁶⁹ Thomas Pokusa Deposition. Vance International Inc. February 3, 1992. Page 6, lines 1 and 16-20.

¹⁷⁰ Megronigle Deposition, page 89, lines 7-24.

¹⁷¹ Pokusa Deposition, page 10, lines 20-25; page 11, lines 1-5, 15-17; page 20, lines 19-25.

¹⁷² *Ibid* at page 20, lines 19-25.

¹⁷³ Oberg Deposition, page 108, lines 3-7. "Vance submitted a better proposal, and I don't have the documents in front of me that we used, but it was based on supervision. They had a back-up force of I believe it was 20 percent of what was required, an additional 20 percent that would be qualified."

Technical Evaluation Committee, "Recommendation for Award at other than low price." October 1, 1987. See, page 2, part 1(b).

"Requirements Contract for Security Services," National Archives and Records Administration. See Evaluation Factor 1, Sub-factor: B—Supervisory Personnel.

¹⁷⁴ Oberg Deposition, page 90, lines 11-18; page 96, lines 11-18; page 100, lines 14-16.

Hannestad Deposition, page 22, lines 5-6; page 28, lines 20-25.

¹⁷⁵ Interview with former Pinkerton official, Lynn Oliver. Conducted by Thomas W. McClure, Investigator, Committee on Governmental Affairs.

¹⁷⁶ Megronigle Deposition, page 11, lines 17-25; page 12, lines 7-13. Hannestad Deposition, page 33, lines 17-22; page 34, lines 3-15; page 35, lines 10-25; page 36, lines 1-12.

Oberg Deposition, page 112, lines 1-6; page 113, lines 6-10.

"Technical Evaluation Committee: Recommendation for Award at other than low price." October 1, 1987. Signed by Lawrence Oberg, Chairperson, Stephen Hannestad, Member. Signature Approving Recommendation: James Megronigle.

"Requirements Contract for Security Services," National Archives and Records Administration. See Evaluation Factor 3: Past related experience.

¹⁷⁷ Letterhead Memorandum. Federal Bureau of Investigation. "James Megronigle, Assistant Archivist for Management and Administration National Archives; Charles Frederick Vance President Vance Incorporated; Fraud Against The Government-National Archives." January 31, 1990.

¹⁷⁸ *Ibid* at page 3.

¹⁷⁹ The Committee reviewed the travel records of the Archivist from December 9, 1987 through May 4, 1992. Also see May 4, 1992 letter from National Archives General Counsel Gary Brooks to Committee, accompanying records provided to Committee. These records indicate that the Archivist was out of his office on travel, accounted for only where per diem expenses were paid by the government, as follows:

December 9, 1987 to September 30, 1988: 58 days
October 1, 1988 to September 30, 1989: 40 days
October 1, 1989 to September 30, 1990: 79 days
October 1, 1990 to September 30, 1991: 78 days
October 1, 1991 to May 4, 1992: 43 days

APPENDIX 1

2-2-73

NMFP

Deposit of Schofield-type Revolver, Smith & Wesson, Serial No. 12892
in Security Vault, 6W-3

To: NMFC, Mr. Simmons

Accompanying this memorandum is a Schofield-type Revolver, Smith & Wesson, Serial No. 12892 donated to the Center for Polar Archives by Mr. E. J. Demas of Studio City, California, ND 401 (66), and formerly in the possession of Mr. Thomas J. Demas of Washington, D. C.

The revolver was picked up for deposit in the Center for Polar Archives at the residence of Mr. Thomas Demas on February 11, 1973 by Alison Wilson, staff member of the Center for Polar Archives.

Received 2-13-73

Returned from photo lab 1/2/73

2-21-84

Revolver to NAS Security.

J. Kurtz

8-16-91

Returned and Received

Michael J. Kurtz

AUG 23 1991

Deputy HN

Schofield-type Revolver, Smith & Wesson

NA

I received a Schofield-type Revolver, Smith & Wesson, Serial No. 12892, from NG, Larry Oberg, on August 16, 1991.

Background: The revolver was donated to the former Center for Polar Archives by Mr. E. J. Demas of Studio City, CA. Mr. Demas was a member of the 1926 Byrd expedition to the North Pole. Alison Wilson of my staff informed me that the revolver was fired either when Admiral Byrd took off or returned from the North Pole. The item was housed in the vault in 6W3. On February 21, 1984, the then Branch Chief, Frank Burch, turned the revolver over to Larry Oberg, then NAS. The revolver was supposed to be "deactivated" and possibly transferred to the Smithsonian.

NN has custody of other weapons among accessioned records. The revolver allegedly used by Lee Harvey Oswald to shoot Dallas Police Officer J. D. Tippit (Commission Exhibit (CE) 143) is included in Entry 42 of the Records of the President's Commission on the Assassination of President Kennedy (RG 272). The Oswald revolver is stored in a custom built case within a National Archives box in a cage protected by a combination lock in 6W-3, a specially protected vault. CE 139, a Mannlicher-Carcano rifle allegedly used by Oswald to assassinate President Kennedy, and CE 542, a replica of this rifle, are also stored in this cage.

We have returned the Demas revolver to the vault in 6W3. It is in the cage with the other weaponry.

MICHAEL J. KURTZ
Deputy Assistant Archivist
for the National Archives

Official File - NN
Reading File - NN
Information - NNR
NNT

File No.

WDG219:DEMAS-REVOL:8/22/91

APPENDIX 2



U.S. OFFICE OF SPECIAL COUNSEL
1120 Vermont Avenue, N.W., Suite 1100
Washington, D.C. 20005-3561

JAN 23 1991

Mr. Lawrence A. Oberg
Inspector General
National Archives and Records Administration
Washington, D.C. 20408

Re: OSC File No. MA-91-0441

Dear Mr. Oberg:

This is in response to your letter dated December 17, 1991, in which you requested that we investigate allegations against the National Archives and Records Administration made by Elaine McKoy. You indicated that Ms. McKoy alleged she may have been subjected to prohibited personnel practices.

The Office of Special Counsel is authorized to investigate allegations of prohibited personnel practices and activities prohibited by civil service law, rule, or regulation. 5 U.S.C. §§ 1214(a)(1)(A), 1216(a), and 2302(b). The information you provided did not allege any prohibited activity within our investigative jurisdiction.

Additionally, you requested that this office investigate Ms. McKoy's allegations of illegal activities and mismanagement within the agency. This office does not have the authority to conduct actual investigations of whistleblowing disclosures.

Accordingly, we plan no further action on this complaint and have closed our file on this matter.

Sincerely,

Leonard M. Dribinsky
Leonard M. Dribinsky
Deputy Associate Special Counsel
for Prosecution

LMD:RBE:SR/sr

MA 91-0441 McKoy
DATE 01, 29 91

U.S. MAIL



U.S. OFFICE OF SPECIAL COUNSEL

Memorandum

TO: Leonard M. Dribinsky
Deputy Associate Special Counsel for Prosecution

THRU: Ralph B. Eddy
Chief, Complaints Examining Unit

FROM: *Shirley Rameo*
Personnel Management Specialist

DATE: January 28, 1991

RE: Recommendation for Closure
McKoy, Elaine; OSC File No. MA-91-0441

I. Synopsis

Complainant: Elaine McKoy

Referred by: Lawrence A. Oberg
Inspector General
National Archives and Records Administration
Washington, D.C. 20408

Status: Property Utilization Officer, GM-14
Career, Non-probationary Appointment

Agency: National Archives and Records Administration
Washington, D.C.

Personnel Action: Suspension

Alleged PPP: None specified

II. Review of the Facts

By letter dated December 17, 1991, Lawrence Oberg, Inspector General, National Archives and Records Administration, requested that OSC investigate allegations by Elaine McKoy, Property Utilization Officer, GM-14. He stated that McKoy indicated that she may have been subjected to prohibited personnel practices and may have knowledge of illegal activities and mismanagement within the agency. He provided

Memorandum to Leonard M. Dribinsky
Page 2

letters written by McKoy as evidence. Because Oberg was a prior supervisor of McKoy and a target in previous complaints, he stated that he believed McKoy would perceive any investigation by his office as biased. A review of the information provided did not appear to indicate any allegations within our investigative jurisdiction.

Ms. McKoy contacted this office on January 23, 1991, unsure of why Oberg had referred her complaint to this office. She indicated that she had not alleged any prohibited personnel practices and thought that the OIG had already investigated her allegations of mismanagement.

On January 25, 1991, I contacted Mr. Oberg by telephone. Oberg indicated that he referred the case to this office for investigation of McKoy's disclosures. I informed Mr. Oberg that this office did not have the authority to conduct investigations of whistleblowing disclosures. He requested that we return the file by letter with our reasons so that he could document the file that he had tried to get someone else to investigate. *(He need to return copies of documents. C.W. 1/28/91)*

I discussed the complaint with Mr. DiJulio on January 25, 1991. He indicated that Oberg had been told a number of times that we did not have the authority to investigate disclosures. He stated that Mr. L'Heureux would want to be apprised of the conversation with Oberg before the case is closed. *Done 1-28-91 VL*

IV. Recommendation

With no evidence of any prohibited activity, I recommend closure of this complaint and no further action on the part of the Special Counsel.

LMD:RBE:SR/sr

No authority to investigate disclosures. No PPP or other violation warranting further OSC inquiry. Note Oberg has requested we take no further action. Concurrence closure 1/28/91

OFFICE OF THE SPECIAL COUNSEL

Memorandum of Telephone ☒ Conversation

Office ☐ Conversation

McKay

Case Name

MA-91-0461

Case Number

DATE: *1/25/91* TIME *9:15*

D.C./Field/Branch *CEU*

CONVERSATION WITH: *Ali Gulio*

Telephone Number: _____ Call to _____; From _____; Returned _____

AGENCY _____

RE: *Talk Obey # of X's we couldn't investigate disclosure. L'Houreny will want to know before returning. Interested: Lemmy & Bob.*

Notes to Secretary:

1. File as is _____; Type up _____ Attorney/Investigator *Proved*
2. Note additional pages _____
3. Distribute copies to _____

[illegible][illegible]

A CUSTOMER SERVICE ORDER AND FREIGHT IN

1. CUSTOMER CORE – UPON ARRIVAL AT ORIGIN HAVE CUSTOMER SIGN AND DATE CHECK

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Request issued at: Confirmation of shipping instructions, agreement for services, rate quotation shipping documents and/or freight bill.

AGENT: **northAmerican** 10933 MORRIS AVENUE • ARLING, CA 91331 (818) 897-4438 (800) 433-3244 FAX (818) 897-5271 CAL P.U.C. 1-100386

Load Date: 4/14/91 No. 0551
 Shipper's Date: 4/14/91 (818) 897-4438
 Destination: 4/14/91

Origin: **LAGUNA HIGUEL** 24800 AVILA RD LAGUNA HIGUEL CA 92653-4697 LARRY DOLING PHONE (415) 744-5343

Destination: **LAGUNA HIGUEL** 40 PRESIDENTIAL DR SIMI CA 91353-4697 LARRY DOLING PHONE (415) 744-5343

SHIPMENT: **LIBRARY** 24800 AVILA RD LAGUNA HIGUEL CA 92653-4697 LARRY DOLING PHONE (415) 744-5343

REMARKS: 4 HELPERS TO LOAD THE ITEMS FROM THE TRAILERS GOING TO SIMI. SEPARATE CREW TO BE AT SIMI AT 11:00AM TO UNLOAD THE GOODS BEING SHIPPED.

SHIPPER'S SIGNATURE: *J. J. Smith*

DATE: 4/14/91

AGENTS SIGNATURE: *[Signature]*

DATE: 4/14/91

1. CUSTOMER COPY - UPON ARRIVAL AT ORIGIN HAVE CUSTOMER SIGN AND GIVE THEM THIS COPY

Request issued at: Confirmation of shipping instructions, agreement for services, rate quotation shipping documents and/or freight bill.

AGENT: **northAmerican** 10933 MORRIS AVENUE • ARLING, CA 91331 (818) 897-4438 (800) 433-3244 FAX (818) 897-5271 CAL P.U.C. 1-100386

Load Date: 4/14/91 No. 0551
 Shipper's Date: 4/14/91 (818) 897-4438
 Destination: 4/14/91

Origin: **LAGUNA HIGUEL** 24800 AVILA RD LAGUNA HIGUEL CA 92653-4697 LARRY DOLING PHONE (415) 744-5343

Destination: **LAGUNA HIGUEL** 40 PRESIDENTIAL DR SIMI CA 91353-4697 LARRY DOLING PHONE (415) 744-5343

SHIPMENT: **LIBRARY** 24800 AVILA RD LAGUNA HIGUEL CA 92653-4697 LARRY DOLING PHONE (415) 744-5343

REMARKS: 4 HELPERS TO LOAD THE ITEMS FROM THE TRAILERS GOING TO SIMI. SEPARATE CREW TO BE AT SIMI AT 11:00AM TO UNLOAD THE GOODS BEING SHIPPED.

SHIPPER'S SIGNATURE: *J. J. Smith*

DATE: 4/14/91

AGENTS SIGNATURE: *[Signature]*

DATE: 4/14/91

1. CUSTOMER COPY - UPON ARRIVAL AT ORIGIN HAVE CUSTOMER SIGN AND GIVE THEM THIS COPY

[illegible]

This is a useful pre-destination of shipping instructions, agreements for services, rate quotations shipping documents and/or freight bill.

(NORTH AMERICAN)

northAmerican

10232 HOMER AVENUE • ANAHEIM, CA 91321
(818) 897-4438 (800) 433-2244 FAX (818) 897-8371
CAL PUC 1-150386

Lead Sheet No. 1/457/117 No. 7524
Delivery Date Rec'd 8/20/84 URDA 7587
Destination Agent
Origin Agent

FROM: HANA LIBRARY
TO: 4000 AVILA RD
VALUHA NIGUL
415 745 5361
FLOOR: 4TH FLOOR
APT NO: 401
CITY: ANAHEIM
STATE: CA
ZIP: 92701
COUNTRY: USA
CITY: ANAHEIM
STATE: CA
ZIP: 92701
COUNTRY: USA

SEPARATE CRLW TO BE AT SMI AT 11:00AM
IN RECEIVING COND. BEING SHIPPED.

NAME: GENERAL HERV ADMIN
ADDRESS: 9855 RAKKITION DR
CITY: ANAHEIM
STATE: CA
ZIP: 92701
COUNTRY: USA

DATE: 8/20/84
TIME: 11:00AM
CITY: ANAHEIM
STATE: CA
ZIP: 92701
COUNTRY: USA

DATE: 8/20/84
TIME: 11:00AM
CITY: ANAHEIM
STATE: CA
ZIP: 92701
COUNTRY: USA

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CHANGES FOR MATERIAL

CHANGES FOR PACKING

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HOURLY PACKING

HOURLY UNPACKING

APPLICATIONS TO BE SHIPPED

GRAND TOTAL

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MOUSE

CARTAGE

Overweight

Extra Man

Flight Charge Long Carry

CUSTOMER'S SIGNATURE AND SEAL OF CARRIER

ESTIMATED COST OF SERVICES (if any)

ALLOWABLE OVERAGE

TOTAL CHARGES ON CHARGE ORDER

MAXIMUM CHARGES SHIPPER SHALL PAY

NO UNWARRANTED ESTIMATE MADE (1) TOTAL PAID

BALANCE DUE

CUSTOMER'S SIGNATURE AND SEAL OF CARRIER

ESTIMATED COST OF SERVICES (if any)

ALLOWABLE OVERAGE

TOTAL CHARGES ON CHARGE ORDER

MAXIMUM CHARGES SHIPPER SHALL PAY

NO UNWARRANTED ESTIMATE MADE (1) TOTAL PAID

BALANCE DUE

At Confirmation of shipping instructions, agreement for services, rate quotation shipping documents and/or freight bill.

AGENT
north American
 10032 MORRIS AVENUE • AMPLA, CA 91331
 (818) 887-4428 (800) 428-2244 FAX (818) 887-8371
 CAL PUC 1-100286

Local Ship Point 4/24/79 No. 0058
Destination Point B-BB/BBR
Destination Agent 7517

Shipper
 HANA HANA
 2430 AVILA RD
 LA JOLLA, CA 92037
 (619) 444-4677

Consignee
 PRESIDENTIAL LIBRARY
 5101 CA
 WASHINGTON, DC 20540
 (202) 512-3363

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 TO RECEIVE LHM BEING RETURNED

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 OVERTIME HOURS 53.68 PER HI
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 HRS 24.88 PER HI
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 ALLOWABLE OVERAGE 10%
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 MAXIMUM CHARGES SHIPPER SHALL PAY
 NO WRITTEN ESTIMATE MADE L1 TOTAL PAID
 BALANCE DUE

CUSTOMER'S DECLARATION AND LIMIT OF COMPANY LIABILITY
 I hereby declare that the above description of the goods is true and correct and that the goods are in good condition and are not damaged or defective in any way. I agree to hold the carrier harmless for any loss or damage to the goods, whether caused by fire, theft, pilferage, or any other cause, except as may be caused by the negligence of the carrier. I agree to accept the carrier's liability for the goods as stated in the bill of lading and to release the carrier from all claims for loss or damage to the goods, whether caused by fire, theft, pilferage, or any other cause, except as may be caused by the negligence of the carrier. I agree to accept the carrier's liability for the goods as stated in the bill of lading and to release the carrier from all claims for loss or damage to the goods, whether caused by fire, theft, pilferage, or any other cause, except as may be caused by the negligence of the carrier.

SHIPPER'S SIGNATURE
 [Signature]
 DATE 4-24-79

CUSTOMER COPY - UPON ARRIVAL AT DUTY HAVE CUSTOMER SIGN AND GIVE THEM THIS COPY

At Confirmation of shipping instructions, agreement for services, rate quotation shipping documents and/or freight bill.

AGENT
north American
 10032 MORRIS AVENUE • AMPLA, CA 91331
 (818) 887-4428 (800) 428-2244 FAX (818) 887-8371
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Local Ship Point 4/24/79 No. 0058
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 (619) 444-4677

Consignee
 PRESIDENTIAL LIBRARY
 5101 CA
 WASHINGTON, DC 20540
 (202) 512-3363

DESCRIPTION
 4 HELPER TO LOAD THE ITEMS F
 ON THE TRAILERS GOING TO SIMI.
 SEPARATE LHM WILL BE AT THE END OF THE TRAILER
 TO RECEIVE LHM BEING RETURNED

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CHARGES FOR UNPACKING
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TOTAL PACKING MATERIAL CHARGES
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 HOURLY PACKING Main Hrs 27.35
 HOURLY UNPACKING Main Hrs 27.35
 APPLICATIONS TO BE SERVED If none SERVED

UNPACKING
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 HOURS CARTRIDGE 47.48 PER HI
 OVERTIME HOURS 53.68 PER HI
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SUPVSR
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 ESTIMATED COST OF SERVICES (if any)
 ALLOWABLE OVERAGE 10%
 TOTAL CHARGES ON CHARGE ORDER
 MAXIMUM CHARGES SHIPPER SHALL PAY
 NO WRITTEN ESTIMATE MADE L1 TOTAL PAID
 BALANCE DUE

CUSTOMER'S DECLARATION AND LIMIT OF COMPANY LIABILITY
 I hereby declare that the above description of the goods is true and correct and that the goods are in good condition and are not damaged or defective in any way. I agree to hold the carrier harmless for any loss or damage to the goods, whether caused by fire, theft, pilferage, or any other cause, except as may be caused by the negligence of the carrier. I agree to accept the carrier's liability for the goods as stated in the bill of lading and to release the carrier from all claims for loss or damage to the goods, whether caused by fire, theft, pilferage, or any other cause, except as may be caused by the negligence of the carrier. I agree to accept the carrier's liability for the goods as stated in the bill of lading and to release the carrier from all claims for loss or damage to the goods, whether caused by fire, theft, pilferage, or any other cause, except as may be caused by the negligence of the carrier.

SHIPPER'S SIGNATURE
 [Signature]
 DATE 4-24-79

CUSTOMER COPY - UPON ARRIVAL AT DUTY HAVE CUSTOMER SIGN AND GIVE THEM THIS COPY

1 and Date Rec'd 4/29/91 No. 5574
 From & Date Rec'd 0/00/00 ORD# 7600
 Description Agent REF#

[illegible]

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Group	1 (ending)	200	Year	Page	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
Group	1 (ending)	200	Year	Page	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
Group	1 (ending)	200	Year	Page	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
Group	1 (ending)	200	Year	Page	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87													

[illegible][illegible]

To fill according to this document in FIVE (5) 100% C-6 PLATE (100%)-RATE (See Permit Manual)				Current Commodity Value \$0000 to - \$0000 to		TOTAL PACKING MATERIAL CHARGES	
AD-B-P	10000 to	20000 to				TAX	
10000 to	20000 to	If this shipment is to be delivered in 1975, and a maximum charge (maximum 100% of the value of the goods) shall be levied.				TOTAL UNIT PACKING CHARGE	

TOTAL UNITS UNPACKAGED		Units	27.35
HOURLY PACKING		Hourly Rate	33.35
HOURLY UNPACKING		Hourly Rate	27.35

Partial and delivery at other than ground base		N/A	1 AADG	Delivery at	N/A	1 N/A	CWT	APPLICABLE TO BE SERVICED	
P.O. #		1	1	1	1	1	1	1	1
Net Wt		1	1	1	1	1	1	1	1
Gross Wt		1	1	1	1	1	1	1	1
Net Wt		1	1	1	1	1	1	1	1
Gross Wt		1	1	1	1	1	1	1	1
Net Wt		1	1	1	1	1	1	1	1
Gross Wt		1	1	1	1	1	1	1	1
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Gross Wt		1	1	1	1	1	1	1	1
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Gross Wt		1	1	1	1	1	1	1	1
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Gross Wt		1	1	1	1	1	1	1	1
Net Wt		1	1	1	1	1	1	1	1
Gross Wt		1	1	1	1	1	1	1	1

[illegible]

EX HANT	HRS	26.00	PER HP
SUPVSR	HRS	08	24.00 PER HP

[illegible]

Rate computed by the carrier billing service It is agreed that the carrier shall report to the shipper amount of the claim payable and within the 10 days of the receipt of the original invoice shall mail, and deliver to the shipper the original of the statement of the carrier. It is further agreed that the carrier shall report to the shipper the amount of the claim payable within 10 days of the receipt of the original invoice. The carrier is obligated to the shipper to pay the claim payable within 10 days of the receipt of the original invoice. The shipper is obligated to the carrier to pay the claim payable within 10 days of the receipt of the original invoice.	ALLOWABLE COVERAGE 10% TOTAL CHARGES ON CHANGE ORDER MAXIMUM CHARGES SHIPPER SHALL PAY NO OTHER CHARGES OR FEES SHALL BE PAID
---	---

[illegible]

ALL ORDERING AND C/O D
CUSTOMER AGREES THAT TITLE TO ALL PACKING MATERIALS SOLD TO
CUSTOMER PASSES TO HIM BEFORE USE OF SUCH MATERIALS IS MADE
Customer's Name
1041 E. 7th St. Apt. 1041
1041 E. 7th St. Apt. 1041
1041 E. 7th St. Apt. 1041

2. CUSTOMER COPY -- UPON ARRIVAL AT ORIGIN HAVE CUSTOMER SIGN AND GIVE THEM THIS COPY

Latest Date Rec'd 4/19/91
 Bureau Date Rec'd 5/18/91
 Distribution Agent

No. 2375
 ORD# 7644
 REF#

[illegible]

net	Leading	Yes	No	Payee's Name	AT 91
date	Second	Yes	No		
date	Third	Yes	No		
	Unpaid	Yes	No		

NOTE: Additional charges for storage, sales handling and transportation will cause a possible change of destination. Freight insurance is not included in D.O.T. rates.

[illegible]

CHARGES FOR MATERIAL		COLUMN 4	CHARGES FOR PACKING	COLUMN 5	CHARGES FOR UNPACKING	COLUMN 6
☐ FREIGHT & DUTY ☐ INSURANCE ☐ OTHER	☐ WAREHOUSE ☐ HANDLING ☐ OTHER					

[illegible]

Insured using the actual weight of the shipment or an average of several shipments. NOTE: If a Statement of Service is filed, the actual weight of the shipment, the Statement of Service must apply.		The following charges must be completed:		TOTAL UNIT UNPACKING CHARGE	
Hourly Packing		Unit Hrs. 01.01		27.35	
Hourly Packing		Unit Hrs. 01.01		33.35	
Hourly Unpacking		Unit Hrs. 01.01		27.35	

Ground loss		N/A	1 inch dia	Date #1	N/A	#1 N/A	DRT		APPLICANCES to be serviced	If none write "NONE"	
Inch Dia		THROU ALL			Additional supports if required #1 2 x 4 @ 8' max per post per ft.			Gross Wt	Lbs	Tare Wt	Lbs
Tie and		17.40	Per Ft		Net Weight			Lbs @ 1		Per Ton	
Attached on basis of loading and unloading see PLATE DOUBLE DRUMS 1 inch between posts at UNPAINTED											

REGULAR	CADMAN	@	47.4	Per Hr.
Overtime	Hours @	53.6	Per Hr.	
Total Man ()	Hours @	28.8	Per Hr.	

12. 27.35		Flight Chicago/Langley		4 Per Out
No Activity -		EX RANT JHRW 26.00		PER IN
Adult Airfare:				
N/A		N/A		
OUT BARRY BOOK JAMES WELLS AND LARRY W. BLOOMBERG (44-38861)				

1. Initial report, including estimated hours, estimated charges, and other pertinent data, shall be submitted to the Bureau of the Census, Washington, D.C., by the 15th day of the month following the month in which the report was prepared. The report shall be submitted in triplicate. The report shall be submitted in triplicate. The report shall be submitted in triplicate.	SUPVNM HRW 00 24. SUPER HR Valuation Change 1 Valuation Change 2 Valuation Change 3 TOTAL CHARGES ADJUSTED
--	--

ESTIMATED COST OF SERVICES (If any)		
ALLOWABLE OVERLAP	10%	
TOTAL CHARGES ON CHANGE ORDER		
MAXIMUM CHARGES IN-PROCESS SHALL BE		

NO INVOITS/INVOICES ESTIMATE MADE ☐		TOTAL PAID	
BALANCE DUE			

[Handwritten signature]

4/9/91

APPENDIX 4

83

MERIT PROMOTION REFERRAL Non-Competitive Eligibles		EXHIBIT 15 8-209, 680	DATE March 28, 1989 VACANCY ANNOUNCEMENT NUMBER NA 89-32
TO: (Name) Don W. Wilson Archivist of the United States		ADDRESS (Include office mailing symbol) N	
FROM: (Name) Wilma J. Kriviski Personnel Services Division		ADDRESS (Include office mailing symbol) NAP	TELEPHONE NO. 724-1513
VACANCY	POSITION TITLE OF VACANCY Inspector General	GRADE GS-15	
	OFFICE N	LOCATION Washington, DC	
	In accordance with the GSA Merit Promotion Plan, the candidates referred below have been determined best qualified of those who have applied for the above position. Information related to their qualifications is attached. ALL OF THESE CANDIDATES MUST BE INTERVIEWED BEFORE A FINAL SELECTION CAN BE MADE. If no selection is made, indicate below under Remarks what further action is desired. Above Not Applicable.		
CANDIDATE	SELECTED	CANDIDATE	SELECTED
Cowles, Roger W. (DoD)		Neitz, William H. (USIA)	
Guajardo, German (DOE)		Atkinson, Darwin (Treasury)	
Leporatti, Louis J. (USIA)		Conn, James (EPA)	
Martin, Thomas M. (AG)		Coffee, Robert J. (DoD)	
Miller, Paul D. (Treasury)		Davis, Richard J. (AG)	
Musumeci, Andrew (Navy)			
Oberg, Lawrence A. (NARA)			
Brady, Robert L. (Treasury)			
REMARKS			

Selection notified
4-10-89 - JPM
accepted. SPM



(Get's Carachi. 5/1)

RECOMMENDING OFFICIAL (Signature) Don W. Wilson	DATE 4/10/89	IF REQUIRED - REVIEWING OFFICIAL (Signature) DATE
GENERAL SERVICES ADMINISTRATION		

GSA FORM 1029 (REV. 3-81)

MERIT PROMOTION REFERRAL		DATE March 28, 1989
TO: (Name) Don W. Wilson Archivist of the United States		VACANCY ANNOUNCEMENT NUMBER NA 89-12
ADDRESS (Include office mailing symbol) N		
FROM: (Name) Wilma J. Kriviski Director, Personnel Services Div.	ADDRESS (Include office mailing symbol) NAP	TELEPHONE NO. 724-1513
POSITION	POSITION TITLE OF VACANCY Inspector General	GRADE GM-10-15
	OFFICE N	LOCATION Washington, DC

In accordance with the GSA Merit Promotion Plan, the candidates referred below have been determined best qualified of those who have applied for the above position. Information related to their qualifications is attached. ALL OF THESE CANDIDATES MUST BE INTERVIEWED BEFORE A FINAL SELECTION CAN BE MADE. If no selection is made, indicate below under Remarks what further action is desired.

CANDIDATE	SELECTED	CANDIDATE	SELECTED
Gabriel De Rango (DOT/IG)			
George O. Henderson (NARA/NSA)			
Fredriksen, Gene (Interior)			
Hancock, Norman (DOT)			
Parish, William (DOT)			
Placesei, Guido (DOEd)			

REMARKS



SELECTING OFFICIAL (Signature) Don W. Wilson	DATE	IF REQUIRED - REVIEWING OFFICIAL (Signature)	DATE
---	------	--	------

GENERAL SERVICES ADMINISTRATION

GSA FORM 1029 (REV. 3-81)

APPENDIX 5

SUPERVISORY APPRAISAL OF DEMONSTRATED PERFORMANCE OR POTENTIAL					
APPOINTMENT NUMBER		POSITION			
NA89-12		Inspector General, GM-301-15			
NAME OF APPLICANT		INSTRUCTIONS: Please have this appraisal completed by your supervisor and submit it with your application (SF 171). If the appraisal is submitted directly by the supervisor the applicant will be permitted to review and/or obtain a copy of the appraisal request.			
Lawrence Oberg					
SECTION I - DEMONSTRATED PERFORMANCE OR POTENTIAL					
BASIS FOR APPRAISAL (Check one)				RANKING FACTORS (Knowledge, skills, abilities and personal characteristics)	LEVEL OF PERFORMANCE (Check one)
OUTSIDE ACTIVITIES	ON-THE-JOB PERFORMANCE	FORMAL TRAINING	POTENTIAL		
					4. EXCEPTIONAL 3. ABOVE AVERAGE 2. AVERAGE 1. SATISFACTORY 0. UNSATISFACTORY
					4 3 2 1 0
X				Ability to conduct or direct investigations into allegations of wrongdoing, mismanagement, waste of funds, etc., and recommend corrective action.	X
	X			Ability to plan, implement, and conduct an internal audit program and to use audit results as a basis for recommendations on the economical utilization, management, and control of agency resources.	X
			X	Skill in written and oral communication.	X
SECTION II - NARRATIVE STATEMENT					
BRIEFLY EVALUATE THE CANDIDATE'S OVERALL ABILITY TO PERFORM THE DUTIES AND RESPONSIBILITIES OF THE POSITION (Narrative comments are required for all factors. If additional space is needed, use reverse side.)					

See attached.

CAPACITY OF APPRAISER FOR MAKING APPRAISAL (Check one)		OTHER (Specify)	
☒ PRESENT IMMEDIATE SUPERVISOR	☐ PRESENT 2ND LEVEL SUPERVISOR		
☐ FORMER IMMEDIATE SUPERVISOR	☐ FORMER 2ND LEVEL SUPERVISOR		
PERIOD DURING WHICH APPRAISER SUPERVISED THE APPLICANT:		FROM	TO
		1982	Present
APRAISER'S SIGNATURE		DATE	TELEPHONE NUMBER
<i>Lawrence Oberg</i>		3/15/89	527-7621
EMPLOYEE'S SIGNATURE		DATE	
<i>Lawrence Oberg</i>			

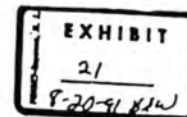
Lawrence Oberg - Section II - Narrative Statement

1. Investigation. As Director of the Administrative Services Division, Mr. Oberg has headed the agency's security program and handled the agency's investigative requirements prior to the establishment of a formal IG unit. He has demonstrated excellent judgment in sensitive matters, coordinated with other agencies' IG units, law enforcement agencies, and U.S. attorneys on investigative matters. He has the program knowledge of many of the administrative areas, often subject to waste, fraud, and abuse, and is familiar with all NARA programs. He will be able to use that knowledge to establish priorities to obtain maximum benefits for the NARA IG unit resources.

2. Audits. While not directly involved in the agency's audit program, Mr. Oberg has prior experience supervising auditors. He has, in his present position, conducted reviews of his own organization as a basis for recommending improvements, and efficient management and control of operations.

3. Written and Oral Communications. Mr. Oberg has excellent written and oral communications. His reports and memoranda are clear and concise, and he has extensive experience in public speaking.

APPENDIX 6



Summary of EEO Complaints filed by Administrative Services Division Employees Prior to April 16, 1989

COMPLAINT NUMBER: 8814
DATE OF COMPLAINT: Sept. 28, 1988
COMPLAINANT: Elaine McKoy
STATUS: Final agency decision issued 3-27-91; filed U.S.
District Court 4-4-91
ISSUES:

NARA impeded performance of her assigned duties -

- o ADP contracting placed under Systems Management Div. (NAM)
- o GS-13 contracting specialist position posted in NAM
- o Excluded from meetings on contracting
- o NAM interfered in operation of Procurement Branch (NASP)
- o Personnel Services Div. (NAP) did not keep her advised of personnel actions in NASP

COMPLAINT NUMBER: 8904
DATE OF COMPLAINT: Dec. 19, 1988
COMPLAINANT: Elaine McKoy
STATUS: Pending hearing; filed U.S. District Court 4-4-91
ISSUES:

Responsibility was being systematically removed from NASP -

- o Contracting responsibilities delegated to Program Analysis Branch
- o Budget and Finance Div. (NAB) altered a procurement document without her knowledge
- o Ordered to take procurement action contrary to regulation
- o Harassment -
 - One hour sick leave refused
 - Oberg used obscene and abusive language
 - Charged with insubordination (2 instances)
 - Charged with AWOL

COMPLAINT NUMBER: 8909; 8910
DATE OF COMPLAINT: March 29, 1989 (2 complaints)
COMPLAINANT: Elaine McKoy
STATUS: Pending hearing; filed U.S. District Court 4-4-91
ISSUES:

- o Reassignment of John Swanson
- o Denial of contracting warrants to Stewart and Swilling
- o Revised critical elements
- o Official reprimand
- o Reassigned to Administrative Services Division (NAS)
- o Denied forms for injury claim

COMPLAINT NUMBER: 8812
 DATE OF COMPLAINT: Sept. 22, 1988
 COMPLAINANT: Nora Swilling
 STATUS: Pending hearing; filed U.S. District Court 4-4-91
 ISSUES:

- o Denied career ladder promotion
- o Desk audits required as condition for promotion
- o Not provided with desk audit policy
- o Not provided with requested information

COMPLAINT NUMBER: 8908
 DATE OF COMPLAINT: Mar. 29, 1989
 COMPLAINANT: Nora Swilling
 STATUS: Pending hearing; filed U.S. District Court 4-4-91
 ISSUES:

- o Management refused to issue contracting warrants

COMPLAINT NUMBER: 8813
 DATE OF COMPLAINT: Sept. 22, 1988
 COMPLAINANT: Joan Stewart
 STATUS: Pending hearing; filed U.S. District Court 4-4-91
 ISSUES:

- o Denied career ladder promotion
- o Desk audits required as condition for promotion
- o Not provided with desk audit policy
- o Not provided with requested information

COMPLAINT NUMBER: 8907
 DATE OF COMPLAINT: Mar. 29, 1989
 COMPLAINANT: Joan Stewart
 STATUS: Pending hearing; filed U.S. District Court 4-4-91
 ISSUES:

- o Management refused to issue contracting warrants

Summary of EEO Complaints filed by Administrative Services
 Division Employees Prior to April 16, 1989

COMPLAINANT: Elaine McKoy
 COMPLAINT NUMBER: 8814
 DATE OF COMPLAINT: Sept. 28, 1988
 STATUS: Final agency decision issued 3-27-91; filed U.S.
 District Court 4-4-91

ISSUES INVOLVING LARRY OBERG: None.

OTHER ISSUES:

NARA impeded performance of her assigned duties -

- o ADP contracting placed under Systems Management Div. (NAM).
- o GS-13 contracting specialist position posted in NAM.
- o Excluded from meetings on contracting.
- o Steven Hannestad (NAM) interfered in operation of Procurement Branch (NASP).
- o Unable to obtain information from Personnel Services Div. (NAP) on personnel actions in NASP.

COMPLAINANT: Elaine McKoy
 COMPLAINT NUMBER: 8904
 DATE OF COMPLAINT: Dec. 19, 1988
 STATUS: Pending hearing; filed U.S. District Court 4-4-91
 ISSUES:

ISSUES INVOLVING LARRY OBERG:

- o Ordered to take procurement action contrary to regulation and law.
- o Refused one hour sick leave.
- o Threatened with disciplinary action.
- o Oberg used obscene and abusive language.
- o Charged with insubordination for refusal to obey directive.
- o Charged with insubordination for failing to appear at a meeting.
- o Improperly charged with unauthorized absence.
- o Charged with being insubordinate to Jerry Misko.
- o Directed to delegate contracting responsibilities to David Kepley, Chief, Program Analysis Branch (NAAP).
- o Directed to order John Swanson to Oberg's office to complete contract assignments previously under McKoy's supervision.

OTHER ISSUES:

- o Director of Budget and Finance Div. (NAB) altered a procurement document without McKoy's knowledge.
- o James Megronigle issued limited warrant to Kopley.
- o Directed by Misko to take procurement action previously ordered by Oberg.
- o Directed by Misko to handle procurement action contrary to regulation.
- o Procurement authority assigned to Misko thereby infringing on McKoy's responsibility.

COMPLAINANT: Elaine McKoy

COMPLAINT NUMBER: 8909; 8910 (combined for processing)

DATE OF COMPLAINT: March 29, 1989

STATUS: Pending hearing; filed U.S. District Court 4-4-91

ISSUES INVOLVING LARRY OBERG:

- o Contracting warrants for 2 staff members (Stewart and Swilling) were denied.
- o John Swanson reassigned to Oberg's staff.
- o Critical elements were revised.
- o Issued unjustified letter of official reprimand.
- o Reassigned from Supervisory Contract Specialist to Property Utilization Officer.
- o Denied opportunity to clear out of office.
- o Reassignment made effective prior to stated effective date (i.e., detailed to Property Utilization Officer position prior to effective date of reassignment).
- o Presented with letter that revoked contracting officer's warrant.
- o Jerry Misko reassigned to Supervisory Contract Specialist position.
- o On-the-job injury claim was mishandled by Mr. Oberg, the Public Health Service nurse, and the Employee Relations Specialist, Joan Janshego; Oberg controverted worker's compensation claim.

OTHER ISSUES: None.

COMPLAINANT: Nora Swilling

COMPLAINT NUMBER: 8812

DATE OF COMPLAINT: Sept. 22, 1988

STATUS: Pending hearing; filed U.S. District Court 4-4-91

ISSUES INVOLVING LARRY OBERG:

- o Denied career ladder promotion.
- o Desk audits required as condition for promotion.

OTHER ISSUES:

- o Not provided with desk audit policy.
- o Not provided with requested information.

COMPLAINANT: Nora Swilling

COMPLAINT NUMBER: 8908

DATE OF COMPLAINT: Mar. 29, 1989

STATUS: Pending hearing; filed U.S. District Court 4-4-91

ISSUES INVOLVING LARRY OBERG:

- o Refused to forward request for contracting officer's warrant.

OTHER ISSUES: None.

COMPLAINANT: Joan Stewart

COMPLAINT NUMBER: 8813

DATE OF COMPLAINT: Sept. 22, 1988

STATUS: Pending hearing; filed U.S. District Court 4-4-91

ISSUES INVOLVING LARRY OBERG:

- o Denied career ladder promotion.
- o Desk audits required as condition for promotion.

OTHER ISSUES:

- o Not provided with desk audit policy.
- o Not provided with requested information.

COMPLAINANT: Joan Stewart

COMPLAINT NUMBER: 8907

DATE OF COMPLAINT: Mar. 29, 1989

STATUS: Pending hearing; filed U.S. District Court 4-4-91

ISSUES INVOLVING LARRY OBERG:

- o Refused to forward request for contracting officer's warrant.

OTHER ISSUES: None.

APPENDIX 7

18

TUESDAY

AUGUST, 1987

Thesson

225

AUGUST 1987

123 Days Left

APPOINTMENTS & SCHEDULED EVENTS

HOURS: NAME: PLACE: BY: PAGES:

JULY 1987

SEPTEMBER 1987

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

ITEM NO. 1

TO DO TODAY NUMBER EACH ITEM

2-25

2-25 Nat'l Archives

7 8 9 10 11 12 1 2 3 4 5 6 7 8 9 10

07:00 08:00 09:00 10:00 11:00 12:00 13:00 14:00 15:00 16:00 17:00 18:00 19:00 20:00 21:00 22:00

BUSINESS EXPENSES

PHONE CALLS

EXHIBIT NO. 2-25-92
P. EASTES

Thessen

DIARY RECORD OF WORK PERFORMED

34th Week
230th DayTUESDAY
AUGUST, 1967

18

NO.	NAME OR PROJECT	DETAILS OF METHOD - ASSIGNMENT'S DECISIONS	DATE
1	Archives -		
2			
3	Guards trained & certified thru		
4	GSA.		
5			
6	12 guards @ day	9-5at	
7	3-4 @ night	9-5am	
8			
9	No current guards to stay on.		
10	No adequate on-site supervision		
11			
12	Uniform & appearance - stringent		
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APPENDIX 8



10467 White Granite Drive
Suite 210
Oakton, Virginia 22124
(703) 385-6754
Telex 353776 Vance Int - UD

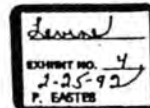
August 20, 1987

DEAR MR. MCGRODICK,

I JUST THOUGHT I WOULD WRITE YOU A SHORT NOTE TO SAY THANK YOU FOR TAKING THE TIME TO HEAR FROM DAN THESSAN AND MYSELF. AS YOU PROBABLY REALIZED DURING OUR MEETING, VANCE INTERNATIONAL WOULD CHERISH THE OPPORTUNITY TO SERVE THE NATIONAL ARCHIVES. IT WOULD BE OUR PLEASURE TO AFFORD YOU THE PEACE OF MIND THAT COMES KNOWING THAT ARCHIVES VISITORS AND STAFF ARE BEING CARED FOR BY A SENSITIVE, ALERT, WELL TRAINED AND SUPERVISED SECURITY FORCE. I KNOW THESE HAVE BEEN TOUGH TIMES FOR YOU LATELY. THE MAGNITUDE OF SECURITY SERVICE RELATED PROBLEMS YOU HAVE HAD TO ENDURE IS STAGGERING. I HOPE YOU WILL AGREE THAT VANCE INTERNATIONAL IS PREPARED TO OFFER YOU IMMEDIATE AND LONG TERM SOLUTIONS. WE LOOK FORWARD TO HEARING FROM YOU SOON.

TAKE GOOD CARE,

Jim Levine



APPENDIX 9



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.Falls Church, Virginia 22043
January 31, 1990

JAMES MEGRONIGLE
ASSISTANT ARCHIVIST FOR MANAGEMENT AND ADMINISTRATION
NATIONAL ARCHIVES;
CHARLES FREDERICK VANCE
PRESIDENT
VANCE INTERNATIONAL, INCORPORATED;
FRAUD AGAINST THE GOVERNMENT-NATIONAL ARCHIVES

Investigation of the captioned matter by the FEDERAL BUREAU OF INVESTIGATION (FBI) was predicated on information received from a confidential source during the month of December, 1988. The confidential source stated that JAMES MEGRONIGLE, a senior NATIONAL ARCHIVES official, took actions to insure that VANCE INTERNATIONAL was awarded the NATIONAL ARCHIVES security contract in 1987. According to the confidential source, VANCE INTERNATIONAL was awarded the contract even though PINKERTON, another security company, submitted a bid which was much lower.

CONFERENCE WITH US ATTORNEYS OFFICE

On December 30, 1988, Special Agents of the FBI discussed the above information with Assistant US Attorney (AUSA) DARRYL JACKSON, US Attorneys Office, Washington, DC. AUSA JACKSON requested that the FBI conduct an investigation to determine whether Federal bribery and/or fraud statutes were violated with regard to the alleged questionable procurement activities at NATIONAL ARCHIVES.

INVESTIGATION

The investigation determined that on September 4, 1987, NATIONAL ARCHIVES sent the security contract request for proposal (RFP) to four security companies: VANCE INTERNATIONAL, WACKENHUT, PINKERTON AND WELLS FARGO. The RFP required interested companies to submit their proposals (bids) by September 18, 1987. Because there was insufficient time to prepare a bid, WACKENHUT and WELLS FARGO did not respond. Only two companies, VANCE INTERNATIONAL and PINKERTON, INCORPORATED submitted bids to NATIONAL ARCHIVES.

Officials of PINKERTON advised the FBI they had to "throw together" their proposal in order to meet the time restrictions imposed by the RFP. VANCE INTERNATIONAL's bid price was \$ 3.8 million and PINKERTON's bid price was \$ 2.7 million. On October 1, 1987, VANCE INTERNATIONAL was awarded the contract.

A review of the NATIONAL ARCHIVES security contract file determined that NATIONAL ARCHIVES procurement personnel waived several procurement regulations on the basis of exigent circumstances. Basically, these exigent circumstances were created when a determination was made on September 3, 1987, to terminate the contract with the security company then providing services to NATIONAL ARCHIVES. That termination was to take effect on October 5, 1987.

At the time of the procurement, JAMES MEGRONIGLE was the Assistant Archivist for Management and Administration and LAWRENCE OBERG, MEGRONIGLE's subordinate, was the Director of Administrative Services. OBERG sat on the two member technical review panel which recommended that VANCE INTERNATIONAL receive the contract award. OBERG justified the award to the highest bidder based on VANCE INTERNATIONAL's superior technical qualifications.

The investigation further determined that prior to the aforementioned RFP being sent out, JAMES MEGRONIGLE directed that LAWRENCE OBERG meet with representatives of VANCE INTERNATIONAL.

On August 14, 1987, OBERG held a conference with JAMES LEVINE, a Vice President with VANCE INTERNATIONAL. Evidence obtained during the investigation determined that OBERG told LEVINE of NATIONAL ARCHIVES' intentions to replace their security contractor. OBERG described for LEVINE the type of services being provided by the contractor, including the number of guard stations in place at the NATIONAL ARCHIVES building.

On August 18, 1987, OBERG, MEGRONIGLE and other NATIONAL ARCHIVES officials met with representatives of VANCE INTERNATIONAL.

On September 18, 1987, VANCE INTERNATIONAL submitted their bid to NATIONAL ARCHIVES after the deadline had passed. The VANCE INTERNATIONAL bid was accepted only after JAMES MEGRONIGLE directed procurement officials to waive the deadline requirement.

It was also determined that during 1988, OBERG frequently went to lunch with DANIEL THESEN, the VANCE INTERNATIONAL employee who supervised the NATIONAL ARCHIVES contract. No evidence was found that THESEN or other VANCE INTERNATIONAL representatives paid for OBERG's meals.

When interviewed by the FBI regarding their contacts with representatives of VANCE INTERNATIONAL, both OBERG and MEGRONIGLE stated that the purpose of these contacts was to gather information to be used in the preparation of the RFP. Both of them denied telling VANCE INTERNATIONAL officials of their intentions to hire another security company. Although the investigation found evidence to the contrary (August 14, 1987 contact with JAMES LEVINE), OBERG denied that he provided VANCE INTERNATIONAL officials with information which would be useful in preparing their (VANCE INTERNATIONAL's) bid. Both OBERG and MEGRONIGLE denied that their actions during the procurement process were intended to assist VANCE INTERNATIONAL in that company's attempts to win the contract award. OBERG stated MEGRONIGLE never attempted to pressure him into taking actions favorable to VANCE INTERNATIONAL.

FINDINGS

An extensive investigation conducted by the FBI discovered no evidence that VANCE INTERNATIONAL defrauded the Government. Furthermore, there was no information developed during the investigation which indicated that MEGRONIGLE and OBERG accepted bribes and/or gratuities from representatives of VANCE INTERNATIONAL.

OPINION OF THE US ATTORNEYS OFFICE

On January 23, 1990, the above information was discussed with AUSA WILLIAM LANDERS, Chief, Public Integrity Section, Office of the United States Attorney, Washington, DC. AUSA LANDERS declined prosecution in the captioned matter due to a lack of evidence to support a criminal prosecution against the captioned subjects. In view of AUSA LANDERS' position, the FBI will conduct no further investigation in the captioned matter.

Stuart M. Gerson
Assistant Attorney General
Civil Division
Department of Justice

Dear :

Because of the expedited appeal in the case of Armstrong v. Executive Office of the President, I believe it is essential that we meet at your earliest convenience to discuss the relationship of that case to the Memorandum of Agreement signed on January 20, 1993, covering certain Bush Administration computer backup tapes and other electronic materials. I also have a number of concerns about the Agreement itself, as outlined below.

The Memorandum of Agreement between the National Archives and Records Administration, the National Security Council, the Office of Administration, and George Bush, signed on January 20, 1993, uses the term "derivative information" in Section I, provisions 5 and 6. The term is not defined in the Agreement, and no reference to another established definition is provided. While the term "derivative classification" is defined in Part 2, Sec. 2.1 (a) of Executive Order 12356, that definition is limited to the issue of national security information. In view of the lack of definition and the persistent questions that the lack of definition raises, I believe that the phrase "and all derivative information in whatever form" should be eliminated in both provisions 5 and 6.

Also in Section I, provision 7 states that "at the conclusion of the investigation described in paragraph V.6, materials in Schedule C shall be transferred to NARA as personal records of George Bush." The term "personal records" is defined in 44 U.S.C. 2201 (3) as "all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President." At this time the National Archives does not know what materials are contained on the hard disks that are described in Schedule C only as "hard disks used by personnel of the White House Office and the Office of Policy Development during the Bush Administration." Until the National Archives can review the materials and determine whether they are "Presidential records" or "personal records," we cannot guarantee that all the materials covered by Schedule C are, in fact, "personal records."

Section II provides guidelines for access to the information on the materials. In provision 4, the National Archives agrees to "segregate Presidential from non-Presidential information" and to develop procedures for such segregation. The provision further states that the procedures "shall include a provision by which NARA performs an initial review of the materials (or the responsive portions thereof), identifies Presidential materials, then permits George Bush or his designee to review the materials

to ensure that all Presidential materials have been properly identified by NARA." As you are well aware, the Government is appealing Judge Richey's decision in the District Courts that information on the PROFS, OASIS and A-1 systems meets the statutory definition of a Federal record. The Presidential Records Act states that the term "Presidential records" does not include any documentary materials that are "official records of an agency" (44 U.S.C. 2201(2)(B)(i)). Therefore, if Judge Richey's position is sustained, in order to segregate Presidential from non-Presidential information on the materials NARA will first have to determine what are the Federal records on the tapes, disks, and other media.

Finally, Section III, provision 3, states that "Presidential information on the materials shall be disposed of in accordance with instructions of George Bush or his designee." Once again the lack of a definition is troublesome. If "presidential information" is equivalent to "personal records," this provision would appear to be correct. If, however, "Presidential information" means all of the information on the media that is not actually or potentially a Federal record, this would appear to conflict with 44 U.S.C. 2203(f)(1) and (3) where it is specified that upon conclusion of a President's term of office the Archivist of the United States assumes responsibility for the custody and disposition of Presidential records. To whatever extent Presidential records are determined to be among the media covered by the Memorandum of Agreement, their disposition is controlled by the Presidential Records Act.

I appreciate your attention to this matter. Please let me know when a meeting on the Memorandum and the Armstrong case can be arranged.

File
archives

The National Association of Government Archives and Records Administrators
and
The Society of American Archivists

Joint Statement on Selection Criteria for Archivist of the United States

March 1, 1993

Over the past several months, a number of serious issues have been raised publicly about management of the National Archives and Records Administration (NARA). The two major archival associations in the United States, the National Association of Government Archives and Records Administrators (NAGARA) and the Society of American Archivists (SAA) recently adopted public positions on the situation at NARA which are appended to this statement.

With the resignation of Archivist of the United States, Don W. Wilson, effective March 31, 1993, the selection of a new Archivist to lead the National Archives becomes a paramount concern. The next Archivist must address both the management challenges at NARA and the critical challenge of stewardship of the nation's archival record in today's rapidly changing electronic information environment.

The leadership of NAGARA and SAA offer the following joint recommendations on the selection of the next Archivist of the United States.

Selection Process

NAGARA and SAA recommend to the President and the White House Personnel Office that they:

- Move ahead expeditiously with the Archivist's search and selection process. NARA's needs are too great at this time to permit unnecessary delays in making the appointment of a permanent Archivist to succeed Dr. Wilson. NAGARA and SAA urge that the next Archivist be in place no later than September 1, 1993.
- Designate a search or screening committee to represent NARA's broad constituency that would work with the White House to locate and identify the best qualified candidates for the President's consideration.
- Ensure that the review and selection process is consistent with the provisions of the National Archives Law (44 USC 2103), which indicates that the Archivist's appointment must be made without regard to political affiliation and solely on the basis of professional qualifications required to perform the responsibilities of office.

The National Association of Government Archives and Records Administrators is a national professional association of government archivists and records administrators. It has membership from local, state, and federal government agencies. NAGARA issues publications, carries out studies and projects, holds an annual meeting, and generally fosters improved management of public records and informational resources. For more information contact Executive Director Bruce W. Dearstyne, Executive Secretariat, 10A46 Cultural Education Center, Albany, NY 12230, (518)473-8037.

Suggested Selection Criteria

In identifying and selecting the next Archivist of the United States, NAGARA and SAA urge the President to give preference to candidates with the following traits:

- Successful experience in administering archival or records programs or similar programs with responsibility for cultural or informational resources; ability to expand and change program directions to meet changing needs and conditions; strong, demonstrated commitment to the management, preservation, access, and use of governmental records.
- Experience in working effectively with legislators, government officials, trustees, and government and private resource allocators in ways that ensure adequate support for programs, even in time of financial stringency.
- Demonstrated vision for the future of government archives and information management, including development and implementation of information policy and provision for the management of electronic records.
- Proven ability to articulate a compelling defense of informational resources, and the importance of strong, impartial programs for their care and management, to public officials, resource allocators, users, and the general public.
- Experience in seeking the advice and counsel of constituent and user groups, including professional associations, and in responding to constituent needs.
- Commitment to working creatively with other offices of the Federal government, with state and local governments, and with other archival programs, including those in foreign countries, to effectively address shared responsibilities and concerns.
- A reputation for excellence, leadership and effectiveness within the individual's profession including appropriate scholarly credentials, and sufficient national stature to enable the Archivist to be seen as a leader by a wide range of constituent groups.

The Society of American Archivists, North America's oldest and largest professional archival association, includes a membership of more than 4,600 individuals and institutions concerned with the identification, preservation, and use of records of historical value. Members are drawn from government agencies, colleges and universities, historical societies, museums, libraries, businesses, and religious institutions. For more information, contact Anne P. Diffendal, Executive Director, Society of American Archivists, 600 S. Federal, Suite 504, Chicago, IL 60605, (312)922-0140.



The Society of
American Archivists

July 1, 1993

Steve Katz
United States Senate
Committee on Governmental Affairs
340 Dirksen Office Building
Washington, DC 20510-6250

Dear Steve:

Enclosed are a number of questions that the Council of the Society of American Archivists would like to have posed to the nominee for Archivist of the United States. I would defer to your judgement as to which of these questions would be most appropriate for preliminary inquiries or which would be best for use in the confirmation hearings.

Thanks very much for the opportunity to submit questions. I will be at the Bentley Historical Library at the University of Michigan for the month of July and can be reached there if you have any questions. The number is 313-764-3482.

Sincerely,

A handwritten signature in cursive script that reads 'Anne R. Kenney'. The signature is written in dark ink and is positioned above the typed name.

Anne R. Kenney
SAA President

Telephone
(312) 922-0140

Fax
(312) 347-1452

600 S. Federal
Suite 504
Chicago, Illinois
60605



The Society of
American Archivists

Questions for Nominee for Archivist of the United
States formulated by the Council of the Society of
American Archivists

1. Would you characterize the National Archives as a cultural repository or as a center for records and information management? How do these two roles complement or conflict with each other?
2. In February 1993, NARA issued a "Strategic Plan for the Challenging Federal Environment, 1993-2001." Would you comment on NARA's strategic plan in terms of the content of the stated goals and objectives? To what extent are the goals and objectives both realistic and achievable given the staffing patterns, budget, and other resources now available to NARA? Which goals and objectives do you view as essential and which would you seek to implement on a priority basis? Would you divert funding and staff support to achieve them?
3. The National Archives has been criticized for failing to come to terms with the computer revolution. Under your leadership how could the National Archives develop an effective program for addressing electronic records? Do you think that the NARA strategic plan represents an effective course of action for addressing this issue?
4. There is no doubt that electronic records and recordkeeping pose a daunting challenge to Federal and non-federal governments and other institutions. In 1992, NARA's National Historical Publications and Records Commission, which is chaired by the Archivist of the U.S., completed a strategic plan for the 1990s and published a report entitled "To Protect a Priceless Legacy: The Preservation and Use of America's Historical Record." In this plan, NHPRC emphasized the need to conduct research on issues pertaining to electronic records. The report stressed that progress must be made in defining a) the requirements of archival electronic records programs; b) the conceptual, economic, and technological constraints on the long-term retention of electronic records; and c) the criteria against which to measure the effectiveness of policies, methods, and programs created to administer electronic records effectively.

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Chicago, Illinois
60605

There is general agreement that the results of such research will prove beneficial to all levels of government as well as to public and private institutions throughout the nation. Given that the budget for NHPRC has been [recommended/approved] at a 20% reduction to \$4 million, the Commission will need to make very difficult choices in terms of priorities. Please comment on the relative importance of funding research issues in electronic records as opposed to other objectives noted in the report.

5. The Richey case has raised the question of whether the Archivist of the U.S. has sufficient authority to identify Federal records which should be transferred to the National Archives where they can be appraised, arranged, described, preserved, and made available for use. Do you think that the Archivist currently has sufficient authority to carry out his or her responsibility to safeguard the archival record? If not, would you seek to redefine that authority? How?

6. What role do you think the National Archives should play in developing a Federal information policy?

7. As Archivist of the United States, how would you respond to a Federal official who ignores legislation governing the disposition of records created while in office by donating material to a repository of their choosing?

8. The Library of Congress' opening of Supreme Court Justice Thurgood Marshall's papers immediately upon his death generated a great deal of controversy. Would you support legislation that would make the Justices' papers Federal records so as to ensure their preservation and eventual opening while protecting the interests of sitting Justices in deferring immediate access? What effect would such legislation have on the balance of powers between the legislative and judiciary branches?

9. How would you propose to respond to the President's Council on Integrity and Efficiency report that cites a number of NARA senior administrators of repeated mismanagement and suggests that the new Archivist consider strict disciplinary actions?

~~CONFIDENTIAL~~

DRAFT AT: 12/23/92
REV BB: 12/29/92

CLINTON-GORE TRANSITION TEAM AGENCY REVIEW

Arts and Humanities Task Force

National Archives and Records Administration

Part I. Executive Summary

Part II. Briefing memorandum

Appendices

- A. Organization chart and list of top officials interviewed
- B. NARA Ten-Point Plan
- C. List of documents cited or consulted
- D. List of litigation matters
- E. Archivist's Six-Point Plan
- F. List of Federal agencies with EEO complaints
- G. Senate Committee report on management problems at NARA -
(Not included)
- H. Archives II financing

Note: This report results from a review of NARA and NHRPC conducted by a team headed by Brenda Banks, assisted by Anne P. Diffendal and Anne R. Kenney, December 15-19, 1992.

December 23, 1992 DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: OB DATE: 5/24/98

DRAFT AT: 12/23/92
REV. BB: 12/29/92

CLINTON-GORE TRANSITION TEAM AGENCY REVIEW

National Archives and Records Administration--Executive Summary

I. Entities reviewed by the Task Force.

The Transition Team reviewed the National Archives and Records Administration (NARA) and the Federal grant-making agency within it, the National Historical Publications and Records Commission.

II. How well does the agency currently perform?

The hopes accompanying the 1984 legislation which made NARA independent from the General Services Administration have not been fulfilled. The basic records-management responsibilities are in deep trouble. There has been growing evidence that the current NARA leadership is failing to address effectively the enormous tasks confronting the agency. While many of the published reports address key programmatic issues, more recent attention has focused on poor management. The National Archives leadership seems incapable of implementing recommended courses of action designed to address the problems.

At the same time there have been important accomplishments: In 1995 the largest archival facility in the world, Archives II, will be opened with state-of-the-art facilities and equipment appropriate to the care of all major forms of documentation. The NARA staff at the rank and file level is generally strong and includes nationally recognized leaders in many archival functions. The NARA educational program and curriculum materials are highly acclaimed, as are its distinguished exhibits and publications programs.

The National Historical Publications and Records Commission, which is a Federal grant-making agency within the NARA and united with it in responsibility for the nation's documentary heritage, has established a notable record of achievement including: aiding the development of many of the key components of modern archival programs and principles; publishing a research agenda on electronic records designed as a framework for the archival community; and completing a model strategic planning initiative.

III. Major problems and issues in the areas reviewed.

The major criticisms leveled at the NARA can be summarized as follow: The National Archives has failed

--to define clearly its core mission and priorities in the face of limited resources and increasing demand;

--to respond vigorously to the changing nature of documentation, the possibilities of electronic communication, the issue of electronic records, or the problems of declassification;

--to take an active role in helping Federal agencies to develop effective record-management programs, in identifying and scheduling Federal records, or in making materials accessible in a timely fashion; and,

--to build strategic coalitions with its various constituencies.

In addition there are internal administrative problems, with charges of negligent management at the top level of the agency and many EEO complaints.

IV. Opportunities for change and improvement.

In response to escalating criticism, the Archivist has recently issued a Six-Point Action Plan and moved to accelerate the pace of the agency's strategic planning initiative. However, there is a growing consensus, among many NARA staff and its constituencies that these actions are inadequate for the improvements needed.

Over the past five years, a number of published reports have outlined the enormity of the problems associated with coping with the changing nature of documentation, and they have questioned NARA's ability especially in the area of electronic documentation. These reports make a number of recommendations identifying ways in which NARA could be confronting these challenges more successfully -- beginning with a call for NARA to provide the lead in developing a systematic, long-term strategic plan for electronic records and to play a major role in developing a comprehensive information policy framework for the Federal government.

The National Archives needs to play a more assertive role in defining the place of records and information in an increasingly complex information universe. Legislation may well be needed in certain areas, such as to increase the Archivist's authority to inspect and analyze records and prevent unauthorized removal of official government records. However, acting under its current law, NARA could clarify its policies and approaches toward the appraisal, preservation, accessibility, and use of electronic and other types of records, and it could also, within its current authority, provide more direct assistance to Federal agencies as they define information systems.

While senior NARA management is aware of these problems and has attempted to address some of them, responses have been piecemeal and reactive. An ambitious and intensive planning process with the dual purpose of creating a strategic plan and a more participatory management approach is developing within the agency. This process

should be continued, but there is a growing sense among knowledgeable observers that real change may require new leadership.

V. Key personnel.

1. Presidential appointments.

a. The head of the NARA, the Archivist of the United States, is appointed by the President, with the advice and consent of the Senate, for an undesignated term of service. The appointment, according to law, must be made "without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist." The Archivist may be removed by the President, who must then inform the Congress about the reasons for the removal.

The current archivist, Don Wilson, was appointed by Ronald Reagan in 1987. Based on the problems described earlier, there are questions whether the Archivist can effectively resolve the current problems or whether new leadership is needed to lead the NARA into the 21st century. If the present Archivist is to be replaced, the appointment of a successor should be done in such a way that it will be seen as (1) a non-partisan action and (2) one which will strengthen the independence as well as the management of the National Archives.

b. Other Presidential appointments include two members of the National Historical Publications and Records Commission, who serve for 4-year terms. There is one vacancy for a term ending in December 1993.

VI. Opportunities for budget cuts or additional funding.

Based on the current workload, the programmatic and management deficiencies outlined above, and the needs relating to the new Archives II facility, there would seem little possibilities for any significant budget cuts.

VII. Pending legislation.

It is expected that certain legislation introduced but not passed last year will be re-introduced. This would require periodic reauthorization and provide closer Congressional oversight over NARA. Also, the NHRPC reauthorization is due in 1994.

VIII. Issues which must be immediately addressed by the new Administration.

None. However, there are clearly pressing management problems and policy issues which will need action by NARA leadership, and it may be that only White House attention will prompt the necessary improvements.

#

CLINTON-GORE TRANSITION TEAM AGENCY REVIEW

National Archives and Records Administration--Briefing Memorandum

I. Entities reviewed by the Task Force.

The Transition Team reviewed the National Archives and Records Administration (NARA) and the Federal grant-making agency within it, the National Historical Publications and Records Commission. (A list of the NARA divisions where interviews were conducted by the Transition Team is presented in appendix A.)

II. How well does the agency currently perform?

Background. Preserving the archival record of the Federal government and the broader documentary heritage of the nation is essential to effective and accountable government, to research and education, and to meeting the practical needs and personal interests of millions of individual Americans.

Towards these ends the National Archives was established in 1934. It became an independent agency in 1984 and was renamed the National Archives and Records Administration (NARA). Central to its becoming independent was the universally recognized need to strengthen its role in records management by transforming it from a merely custodial agency into a more pro-active force, to amplify its information-resource responsibilities, and to depoliticize its management.

The National Historical Publications and Records Commission (NHPRC) was established by separate legislation in 1934 as the National Historical Publications Commission (NHPC). NHPC awarded its first grants to support documentary publications in 1965. Subsequently empowered to make grants also for preserving non-federal records, it made the first awards for that purpose in 1974. The Commission was most recently reauthorized in 1988 (44 USC 2501-06).

Basic mission. The NARA now has the following major responsibilities:

--to establish policies and procedures for managing Federal records;

--to assist Federal agencies in documenting their activities, administering records-management programs, scheduling records, and retiring non-current records to Federal records centers;

--to accession, arrange, describe, preserve, and make

available to the public the historically valuable records of the three branches of the government, through its facilities in Washington and nationally dispersed Federal records centers and archival repositories;

- to manage the presidential libraries system;

- to support the National Historical Publications and Records Commission; and

- to publish the laws, regulations, and presidential and other public documents through the Federal Register

The latter three functions appear to be operating relatively smoothly. However, the first three areas listed above, the basic records-management responsibilities, are in deep trouble.

Major criticisms about the NARA. Expectations ran high in 1984 that NARA would flourish under independence. A new Archivist, Don Wilson, was appointed in 1987 and he issued a Ten-Point Plan (see appendix B) designed to bring the Archives into the 21st century. However, there has been growing evidence, in the form of reports and articles, that the current NARA leadership is failing to address the enormous tasks confronting the agency effectively (see appendix C for a list of these documents). While many of the reports address key programmatic issues, more recent attention has focused on poor management. The National Archives leadership has responded defensively and seems incapable of implementing recommended courses of action designed to address the problems.

The major criticisms leveled at the NARA can be summarized as follow: The National Archives has failed

- to develop an effective approach to the issue of electronic records;

- to respond vigorously to the changing nature of documentation;

- to take an active role in identifying and scheduling Federal records and in making materials accessible in a timely fashion; and,

- to define clearly its core mission and the development of priorities in the face of limited resources and increasing demands.

The most important of the problems are discussed in section III below.

Certain aspects of these problem are reflected in several litigation cases which have been initiated by various constituents. These concern access to Nixon tapes and records, the ownership of

records created by the executive branch, and the definition of what constitutes a Federal record in a changing information environment. (See appendix D for information about the litigation matters.)

To sum up: At present, the American public cannot be certain that important records are being identified and retained or that they will be accessible in the future. Citizens cannot count on a usable past.

Accomplishments. While the NARA has been the subject of widespread criticism, there have been during this same period some remarkable accomplishments:

--Within the next two years, the largest archival facility in the world, Archives II on the campus of the University of Maryland-College Park, will be opened. A state-of-the-art building, it will offer excellent facilities for researchers, with an environment and equipment appropriate to the care of paper documents, electronic records, and other special media (photographs, motion pictures, audio, video tapes, cartographic records).

--The NARA staff at the rank and file level is generally strong and includes nationally recognized leaders in such areas as preservation, research and development, and electronic records. This staff is supplemented by a solid and successful volunteer program which is especially active in education and outreach.

--The NARA educational program and curriculum materials are highly acclaimed, as are its distinguished exhibits and publications programs.

--The NARA also has been supporting much-needed standards development and increasing the visibility of the entire archival profession.

The National Historical Publications and Records Commission (NHPRC), which is a Federal grant-making agency within the NARA and united with it in responsibility for the nation's documentary heritage, has also made a number of notable contributions including:

--advancing the collection, preservation, and access to non-Federal records and providing the financial assistance for the development of many of the key components of modern archival programs and principles;

--publishing in 1991 a landmark research agenda on electronic records; and

--undertaking recently an ambitious and extensive strategic planning process that included input from its constituencies which has led to a clear articulation of its mission in both documentary editing and improved record keeping.

III. Major problems and issues in the areas reviewed.

1. Isolation. Ironically, the achievement of agency independence has resulted in isolation rather than leadership--to the detriment of the National Archives as well as of the archival profession. The NARA has failed to build strategic coalitions with its various constituencies: Federal agencies, the Congress, the research community, the general public as well as its most natural supporters, the archival profession. As a result, NARA lacks the support it needs to fulfill its mission and to exercise a national leadership role. In some cases where the National Archives has developed external relationships, the impetus for these has come from outside the agency.

2. Mission clarity and priorities. A major deficiency in NARA is lack of focus: There is no agency-wide mission statement by which to define priorities and evaluate progress. While the individual offices within NARA have written mission statements, the absence of a clearly articulated agency-wide mission statement has led to confusion for both management and staff. This lack of direction figures prominently in the failure of the NARA to fulfill the expectations of leadership held by its supporters in 1984.

3. Lack of evaluation. The NARA has been unable to identify the diverse user community it serves and to identify services needed. While the agency maintains detailed documentation on what is used, it does not have a system which collects and analyzes evaluative information on a regular basis about the quality of the information preserved, the quality of service offered, and the level of satisfaction of the user.

4. Insufficient assistance/leadership to Federal agencies. The National Archives has taken too limited a view of its responsibility for records management. It has not offered Federal agencies sufficient assistance in identifying historically significant documentation and in developing effective records management programs. The NARA continues to see its role as a custodial one and has not been assertive in monitoring the conditions of permanent records while they remain with the agency, before being transferred to the Archives.

5. Declassification problems. The current system for declassifying older records is approaching crisis stage. Over one trillion documents are now classified and thus restricted from use. The financial and personnel burden of the current declassification policy is enormous because all classified documents must be safeguarded in secure storage and reviewed by a process that

frequently requires a page-by-page review. Classification and declassification policies are covered by Executive Order 12356, which was issued by President Reagan in 1982. The NARA has only limited authority to review and process classified documents in its custody. Originating agencies must give final consent for the declassification of their records.

Currently, most classified records remain in the custody of the agencies of origin. With the end of the Cold War, vast quantities of classified records more than thirty years old are expected to be transferred to the Archives. Users are increasingly frustrated by the barriers to access presented by the current process. Records that could offer insights into the events of the latter half of the century are unnecessarily restricted. The nation needs a policy that provides for rapid and systematic declassification of appropriate records. NARA has taken a passive rather than active stance in promoting work toward the needed policy.

While the new Archives II facility will provide for archival records in the nation's capital, regional facilities are sorely cramped for space, and pressure from Federal agencies to accept semi-active records is growing. Further, as declassification proceeds, even at its present rate, there will be further need for space to house these newly opened records.

6. Challenge of changes in documentation. Perhaps most damaging has been the Archives inability to come to terms with the changing nature of documentation: An increasing percentage of the historical record is produced with modern technology. Yet the agency has failed to provide direction for the development and integration of intergovernmental information systems and lags behind some state and institutional archives in such areas as innovative application of information technology, or appraisal and development of automated access and indexing systems and tools. At the heart of the problem is the lack of a Federal information policy that recognizes changes in the way that people communicate, conduct business, and document their activities.

--Lack of computerized communication: When the current Archivist took office, he identified as one of his "Ten-Point" priorities the need for NARA to "take a leadership role in computerization of archival records, emphasizing compatibility of databases both internally and with other agency institutions." Neither internally, nor externally has this promise been realized: The National Archives has not implemented a coordinated computer application for its staff, not developed "Local Area Networks" to link one office to another, and not provided the means for electronic communication even between divisions in the National Archives building, let alone with other NARA facilities or the widely scattered regional archives centers and presidential library system.

Nor is there means for communicating with major external constituencies, including individuals within the scholarly community and the archival profession, by means of the national communications networks, such as Internet.

--Electronic documentation: While the NARA has accomplished much in developing retention and disposition schedules for paper records, it has not come to terms with preserving information available only in electronic form. The archival management of electronic records is probably the most important and complicated issue facing the NARA. (It is, moreover, difficult to conceive of NARA's developing a coordinated response to many of the archival issues associated with electronic communications [e.g., whether "e-mail" constitutes a record, or privacy and authentication issues associated with the use of digital technology] when its staff has little direct experience with major developments in information exchange.)

NARA has established the Center for Electronic Records and the Technology Research Staff, which employ knowledgeable and well respected individuals. Unfortunately their budgets, institutional support, and missions and priorities are insufficient to the tasks they face. The Center's budget, for example, has increased by 300% over the past 8 years, but it still represents only 1.5% of the total NARA budget. The Technology Research Staff has conducted significant research on a number of important topics related to electronic records, but this research is not tied to a clearly defined mission or a set of priorities which address the critical issues in the management of electronic records.

7. Aid to the general public. Researchers have long complained about inadequate finding aids and the lack of subject specialists on the NARA staff.

8. Administrative problems.

--There has been a general sense that the Archivist has delegated too much authority to the Deputy Archivist and not exercised sufficient supervision of her. Responding to this perception, he recently reshuffled some of his top people. (See the Archivist's memo in appendix E for a description of this action.)

--NARA, at the end of 1991, had by far the largest number of EEO complaints of any middle-sized Federal agency, that is, agencies with a work force of 100-2,500. The number of unresolved complaints grew to 73 by 1990 (compared to 25 or fewer for the other agencies in this category); and, although the level declined to 32 by the end of 1991, this was still many more than any comparable agency had. (See appendix F.)

--The NARA oversight committee of the Senate recently issued a damning report about the agency's Inspector General,

criticizing how he was selected for the position as well as his poor performance. Some irregularities in NARA procurement practices were also noted. (See appendix G for the report.)

IV. Opportunities for change and improvement.

1. Archivist "Six-Point Plan" and NARA Strategic Planning. In response to escalating criticism, the Archivist has recently issued a Six-Point Action Plan (see appendix E), which is designed to address specific allegations in the Senate Report and to accelerate the pace of the agency's strategic planning initiative. Begun over a year ago, this process has been fast-tracked since the publication of the Senate report on mismanagement. There is a growing consensus, however, among many NARA staff and its constituencies that this response is inadequate to the need for improvement.

2. Electronic documentation. Over the past five years, a number of published reports have dramatized the enormity of the problems associated with coping with the changing nature of documentation and have questioned NARA's ability to preserve current and future archival information in electronic form. (See list of relevant publications in appendix C.) These reports make a number of recommendations identifying ways in which NARA could be confronting these challenges more successfully -- beginning with a call for NARA to provide the lead in developing a systematic long-term strategic plan for electronic records and to play a major role in developing a comprehensive information-policy framework for the Federal government.

The National Archives needs to play an assertive role in defining the place of records and information in an increasingly complex information universe or to exert its authority over the creation, maintenance, and disposition of Federal records that exist only in electronic form. Certainly the archives authority could be strengthened in this area by the development of legislation designed to increase the Archivist's authority to inspect and analyze records and prevent unauthorized removal of official government records. Some of these concerns may be addressed in the proposed revised Paperwork Reduction Act. However, acting under its current law, NARA could clarify its policies and approaches toward the appraisal, preservation, accessibility, and use of electronic records. NARA could also, within its current authority, provide more direct assistance to Federal agencies as they define information systems.

In closing out this section, it should be mentioned that senior NARA management is aware of these problems and has attempted to address some of them, but responses have been piecemeal and reactive. An ambitious and intensive planning process with the dual purpose of creating a strategic plan and a more participatory

management approach is developing within the agency. While this process should be continued, there is a growing sense among knowledgeable observers that real change may require new leadership.

V. Key personnel.

1. Presidential appointments.

a. The Archivist of the United States is appointed by the President, with the advice and consent of the Senate, for an undesignated term of service. According to NARA's basic legislation, the appointment of the Archivist shall be made "without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist." [See, 44 U.S.C. 2103(a)]. Although this position is not a political appointment, the Archivist may be removed by the President. The President is required to communicate the reasons for removal to the Congress.

The current Archivist, Don Wilson, was appointed by Ronald Reagan in 1987. Based on the problems described earlier, there is obviously a question whether the Archivist can effectively resolve the current problems or whether new leadership is needed to lead the NARA into the 21st century. If the present Archivist is to be replaced, the appointment of his successor should be done in such a way that it will be seen as (1) a non-partisan action and (2) one which will strengthen the independence as well as the management of the National Archives.

b. Other Presidential appointments include two members of the National Historical Publications and Records Commission who serve for 4-year terms. One of these representatives, Frank Vandiver, has recently resigned for personal reasons. His vacant term expires in December 1993. The other, Charles Palm, was recently reappointed to a term that will end in December 1995.

c. In the last session of Congress, legislation was introduced (but failed to pass) that would have, among other things, made the Deputy Archivist a presidential appointment. Similar legislation may be introduced this spring.

VI. Opportunities for budget cuts or additional funding.

The budget of the National Archives has increased by 61% in the past eight years, which represents a 30% increase in funding if inflation is taken into consideration. The construction of Archives II, which will be opened in 1995, was financed by an arrangement whereby NARA has responsibility for a debt of \$30 million principal and interest (see appendix H). It therefore appears that at least the current budget level will continue to be needed. Additional funding would be needed to build an aggressive

program for managing electronic records containing information of enduring value.

VII. Pending legislation.

In the last session of Congress, legislation was introduced (but was not passed) that would have: required periodic reauthorization of the National Archives; increased Congressional oversight for the agency; limited the term of the Archivist to seven years; and extended presidential appointment to the position of Deputy Archivist. It is expected that similar legislation will be introduced this spring. Any new legislation for the NARA as well as future appropriation levels will obviously have to be carefully considered by the new Administration.

The National Historical Publications and Records Administration is due for reauthorization in 1993. This seems in order and without opposition.

A new version of the Paperwork Reductions Act will also be reintroduced which will strengthen NARA's ability to define Federal records and to inspect agency record-keeping practices.

VIII. Issues which must be immediately addressed by the new Administration.

None. However, there are clearly many pressing management problems and policy issues which need action by the NARA leadership, and it may be that only White House attention will prompt the necessary improvements.

APPENDIX A

Top Officials Interviewed

Team members held several meetings with officials and staff of NARA and NHPRC in the National Archives building:

Raymond Mosley, Acting Deputy Archivist

Donn C. Neal, Director of External Affairs and Special Assistant to the Archivist

Michael Kurtz and John Constance, co-chairs of the NARA Strategic Planning Working Group

Admiral James Whittaker, USN (Retd), consultant to NARA for strategic planning

James Megronigle, Director of Management and Administration

Gerald George, Executive Director of NHPRC

Roger A. Burns, Deputy Executive Director of NHPRC

Nancy Sahli, Program Director of NHPRC

Team members observed part of the strategic planning activities, namely a series of hourlong sessions with invited panels of people representing key constituencies of NARA. Members of the Strategic Planning Working Group (34 NARA staff members) heard comments and recommendations on NARA's strengths, weakness, and areas for needed improvement from the panels, followed by questions and discussion. Six panels represented the following groups:

--Congressional Oversight - staff from several Congressional committees and the General Accounting Office

--Research - professional historians and genealogists

--General public - NARA volunteer tour guides and information desk staff; college instructors and others who use NARA curriculum materials and teacher-training workshops

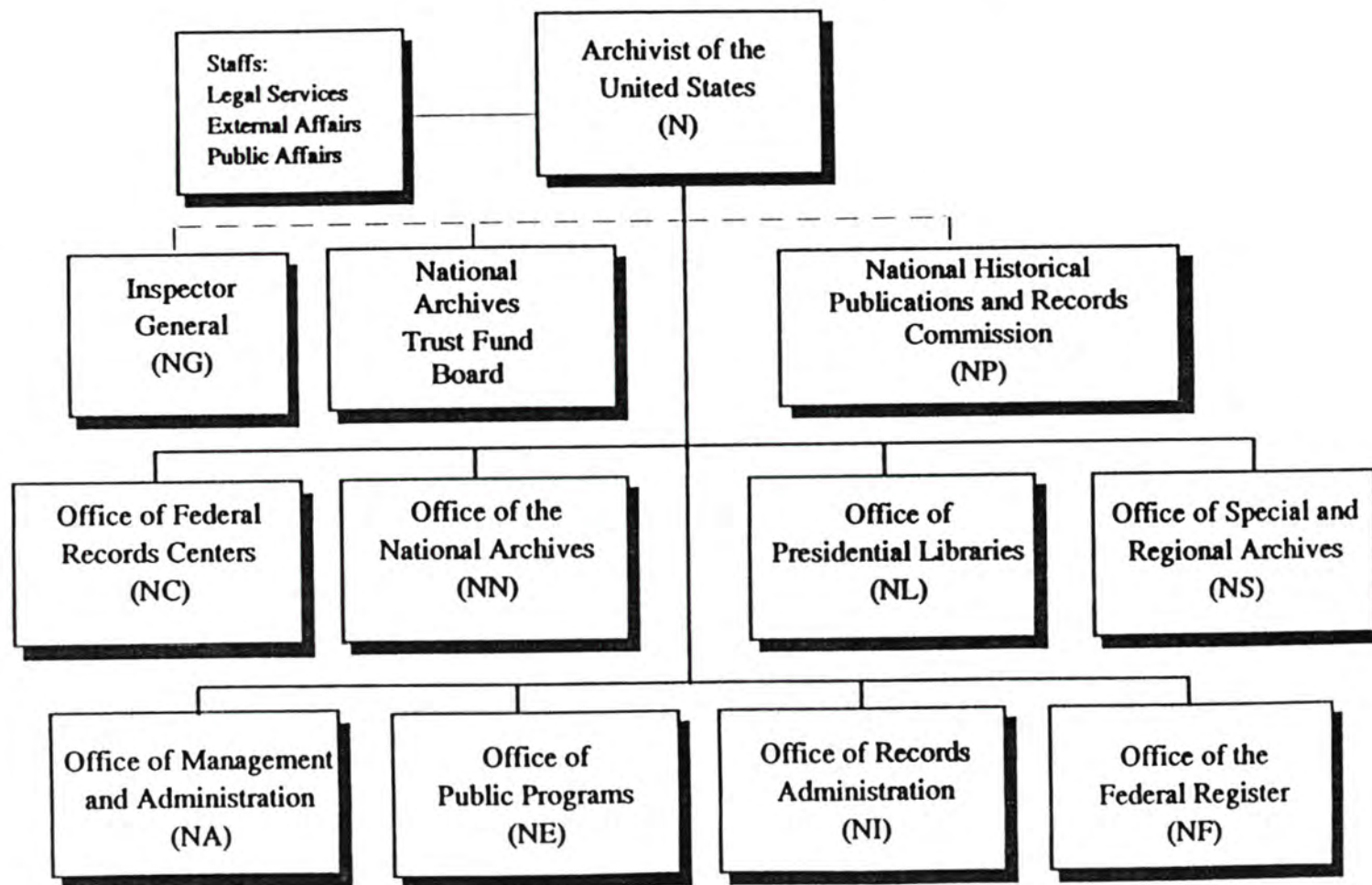
--Federal Agencies - representatives from the Central Intelligence Agency, the Social Security Administration, the Government Printing Office, and the US Army Center for Military History

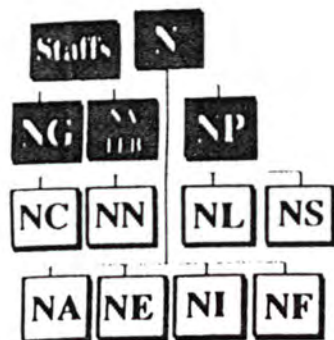
--Archival Community - representatives from professional archival associations

--Office of Management and Budget

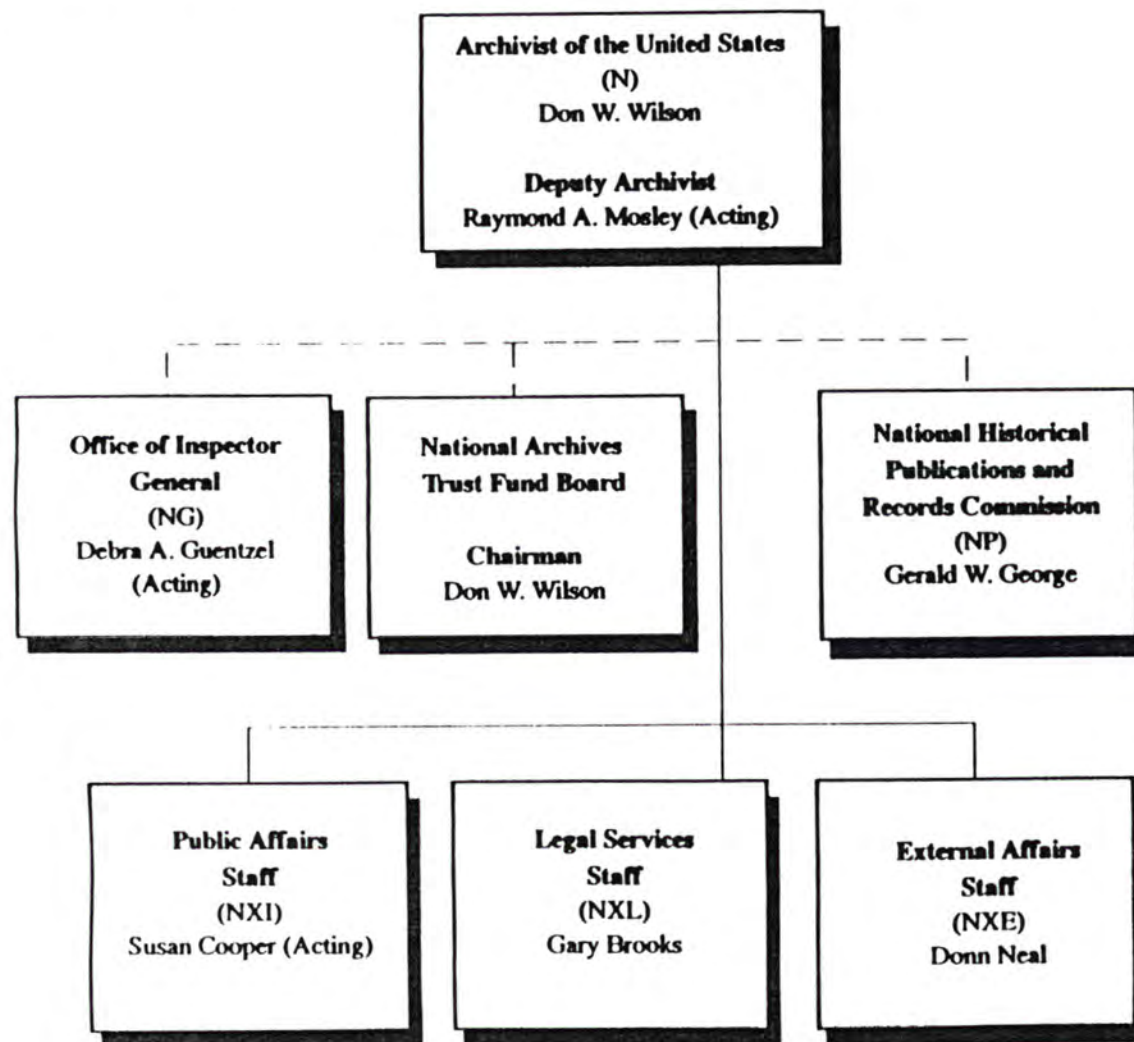


National Archives and Records Administration





Office of the Archivist



1993 Resources		
Nationwide		
	C.O.	Field
Funding (\$000):		
Direct	\$2,878.7	
Grants	5,000.0	
Personnel (FTE):		
Direct	44	

Office of the Archivist

Archivist:

- Overall agency direction
- Chairs National Historical Publications and Records Commission
- Chairs the National Archives Trust Fund Board
- Chairs the Administrative Committee of the Federal Register
- Accepts a Presidential library building

Public Affairs Staff:

- Public relations
- Media relations
- Internal newsletter
- Annual report and other publications

External Affairs Staff:

- Relations with professional organizations
- Institutional relationships required by statute
- Contacts with international archival community

Legal Services:

- Legal advice
- Litigation liaison
- Agency ethics official

National Historical Publications and Records Commission:

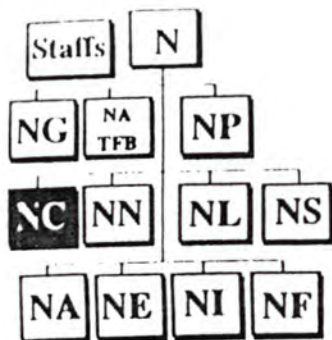
- Publication grants
- Grants to private and public archives

National Archives Trust Fund Board:

- Oversight of Trust Fund operations
- Oversight of Gift Fund operations

Inspector General:

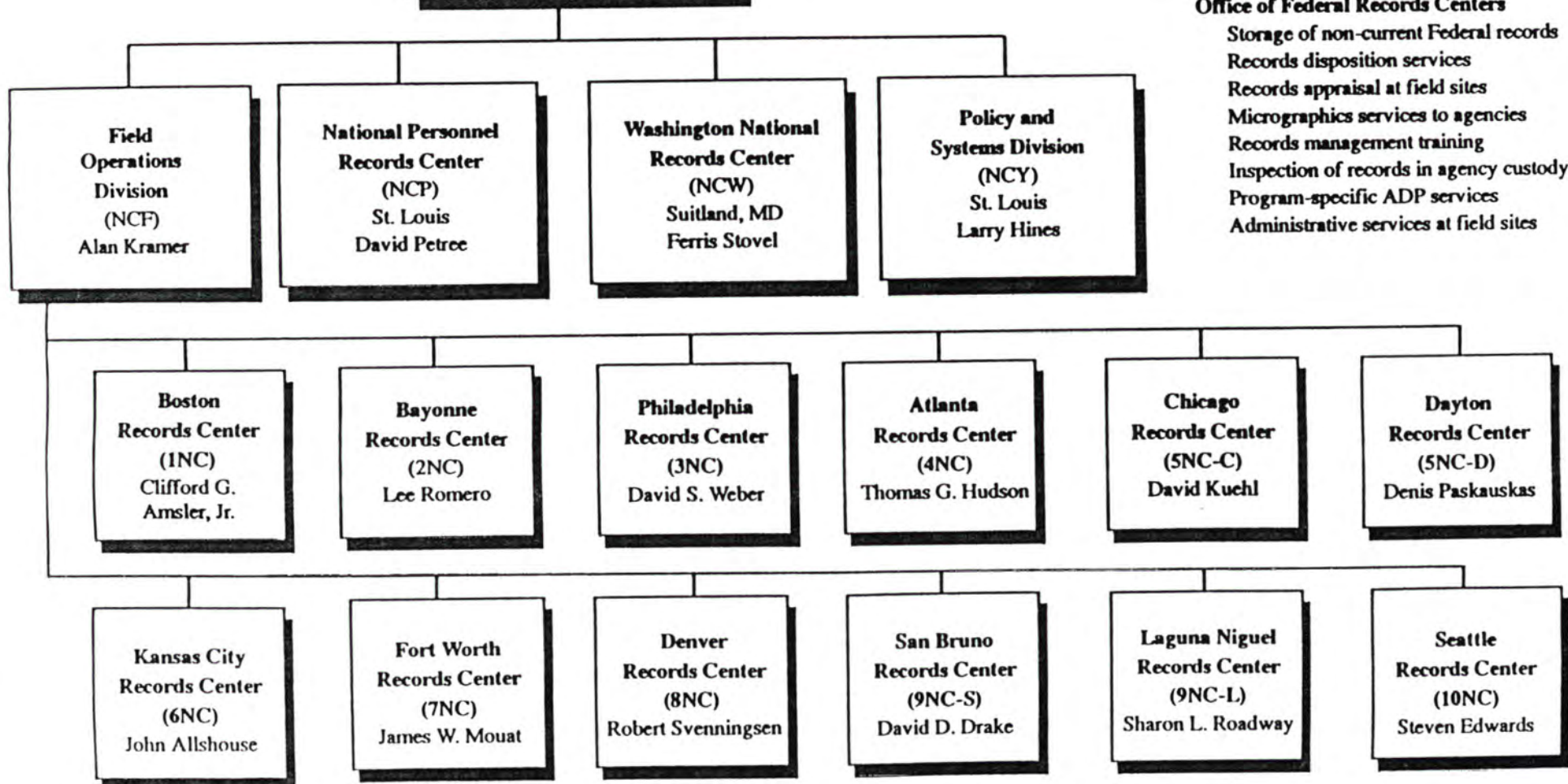
- Audits
- Investigations

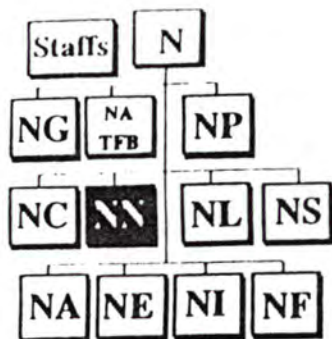


Office of Federal Records Centers

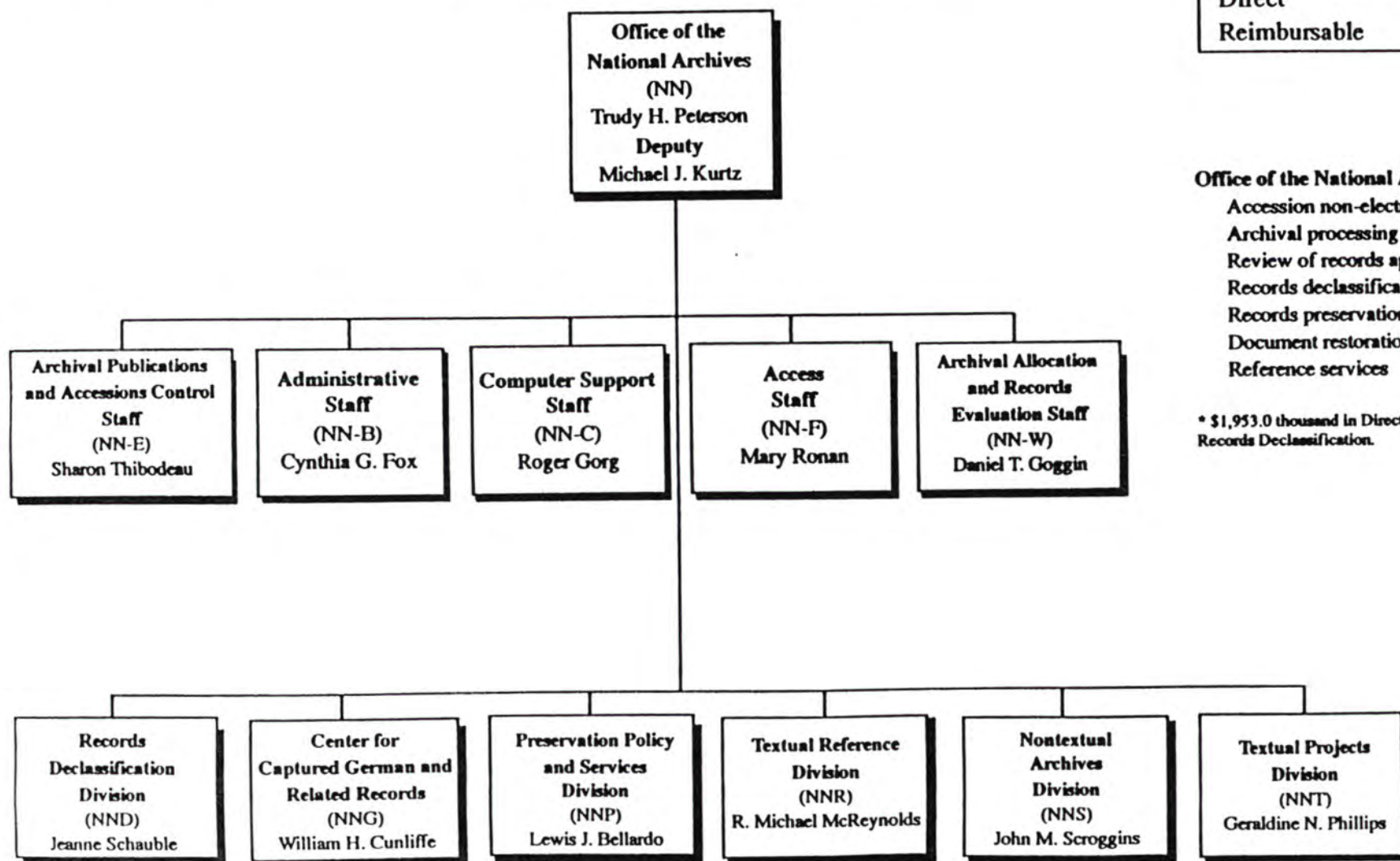
Office of Federal
Records Centers
(NC)
David F. Peterson
Deputy
Gregory A. Pomier

1993 Resources		
Nationwide		
	C.O.	Field
Funding (\$000):		
Direct	\$ 3451.2	\$ 18,254.7
Reimbursable	11,219.2	13,681.8
Personnel (FTE):		
Direct	83	640
Reimbursable	57	512





Office of the National Archives

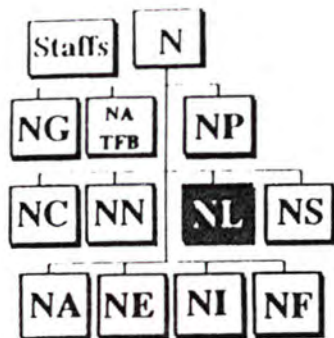


1993 Resources		
Nationwide		
	C.O.	Field
Funding (\$000):		
Direct	\$ 25,314.1	
Reimbursable	1,569.0	
Personnel (FTE):		
Direct	481	
Reimbursable	55	

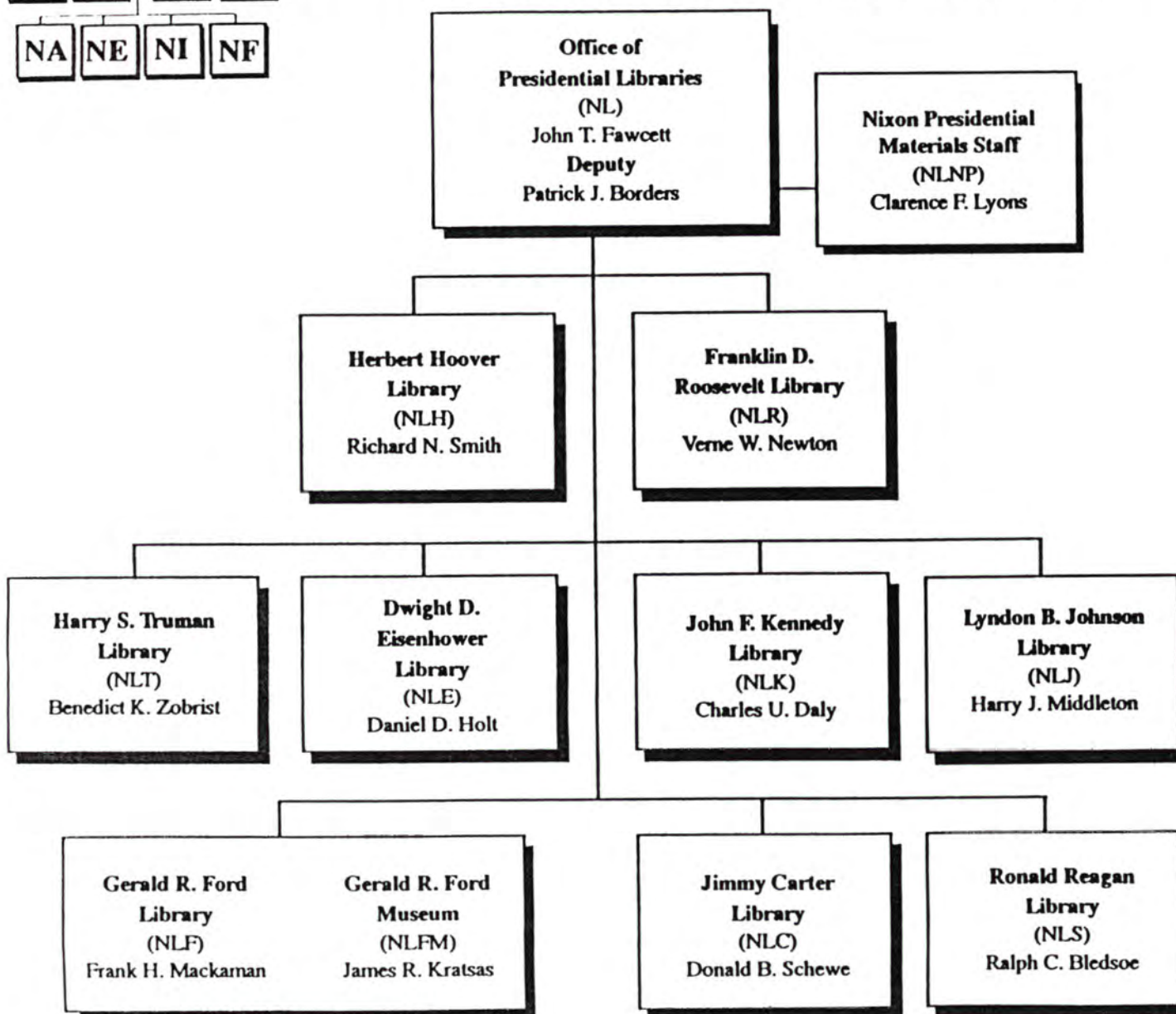
Office of the National Archives

Accession non-electronic Federal records
 Archival processing of holdings
 Review of records appraisals
 Records declassification *
 Records preservation
 Document restoration
 Reference services

* \$1,953.0 thousand in Direct funding is included for Records Declassification.



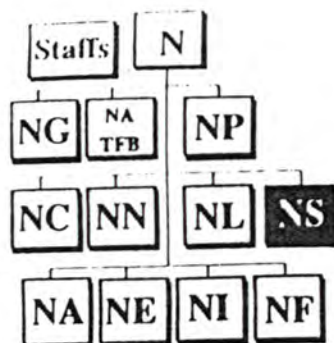
Office of Presidential Libraries



1993 Resources		
Nationwide		
	C.O.	Field
Funding (\$000):		
Direct	\$ 2,052.4	\$ 9,101.9
Reimbursable		34.0
Personnel (FTE):		
Direct	42	191
Reimbursable		1
Trust Fund		75

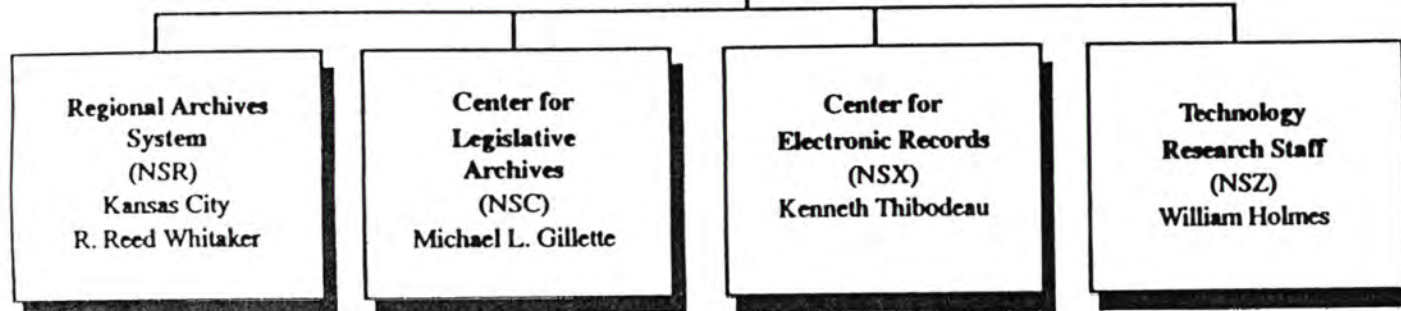
Office of Presidential Libraries
 Assume custody of Presidential records
 Solicitation of private papers
 Administration of deeds of gifts
 Reference service
 Records declassification *
 Museum operations
 Symposia sponsorship
 Local administrative support services

* \$586.9 thousand in Direct funding is included for Records Declassification.



Office of Special and Regional Archives

Office of Special and Regional Archives (NS)
 Claudine J. Weiher (Acting)
 Deputy
 Rosanne T. Butler

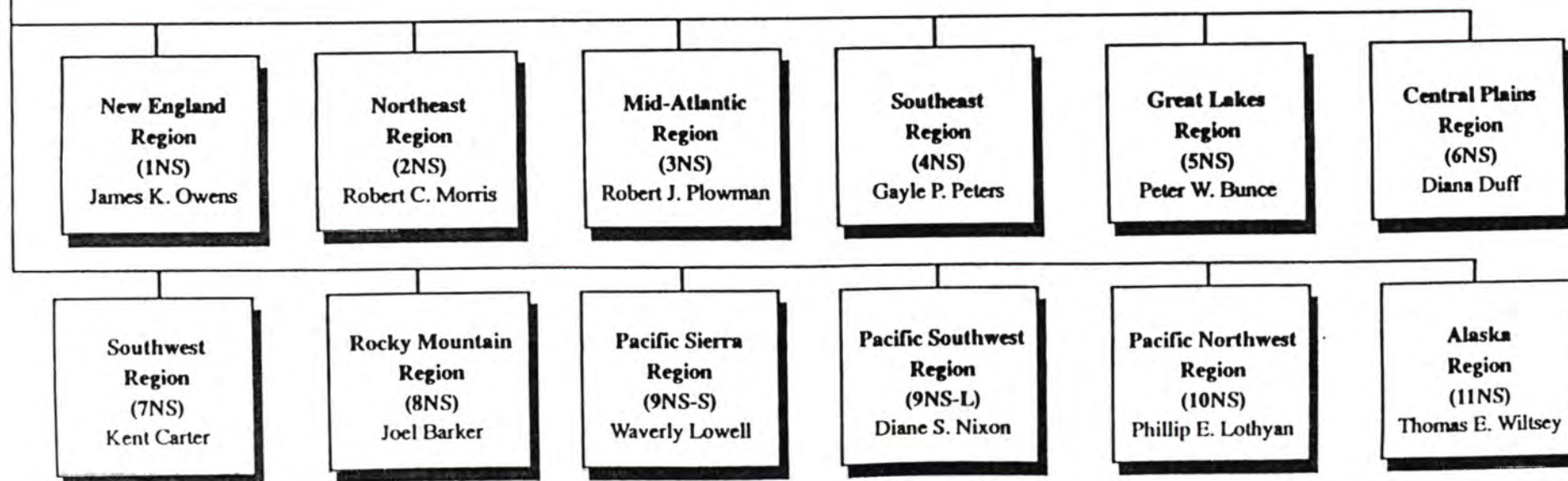


Regional Archives System (NSR)
 Kansas City
 R. Reed Whitaker

Center for Legislative Archives (NSC)
 Michael L. Gillette

Center for Electronic Records (NSX)
 Kenneth Thibodeau

Technology Research Staff (NSZ)
 William Holmes



New England Region (1NS)
 James K. Owens

Northeast Region (2NS)
 Robert C. Morris

Mid-Atlantic Region (3NS)
 Robert J. Plowman

Southeast Region (4NS)
 Gayle P. Peters

Great Lakes Region (5NS)
 Peter W. Bunce

Central Plains Region (6NS)
 Diana Duff

Southwest Region (7NS)
 Kent Carter

Rocky Mountain Region (8NS)
 Joel Barker

Pacific Sierra Region (9NS-S)
 Waverly Lowell

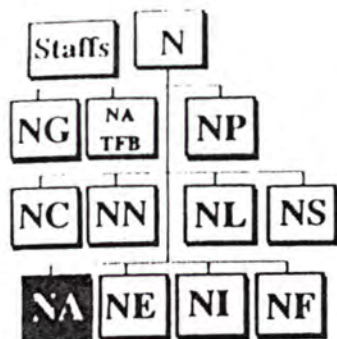
Pacific Southwest Region (9NS-L)
 Diane S. Nixon

Pacific Northwest Region (10NS)
 Phillip E. Lothyan

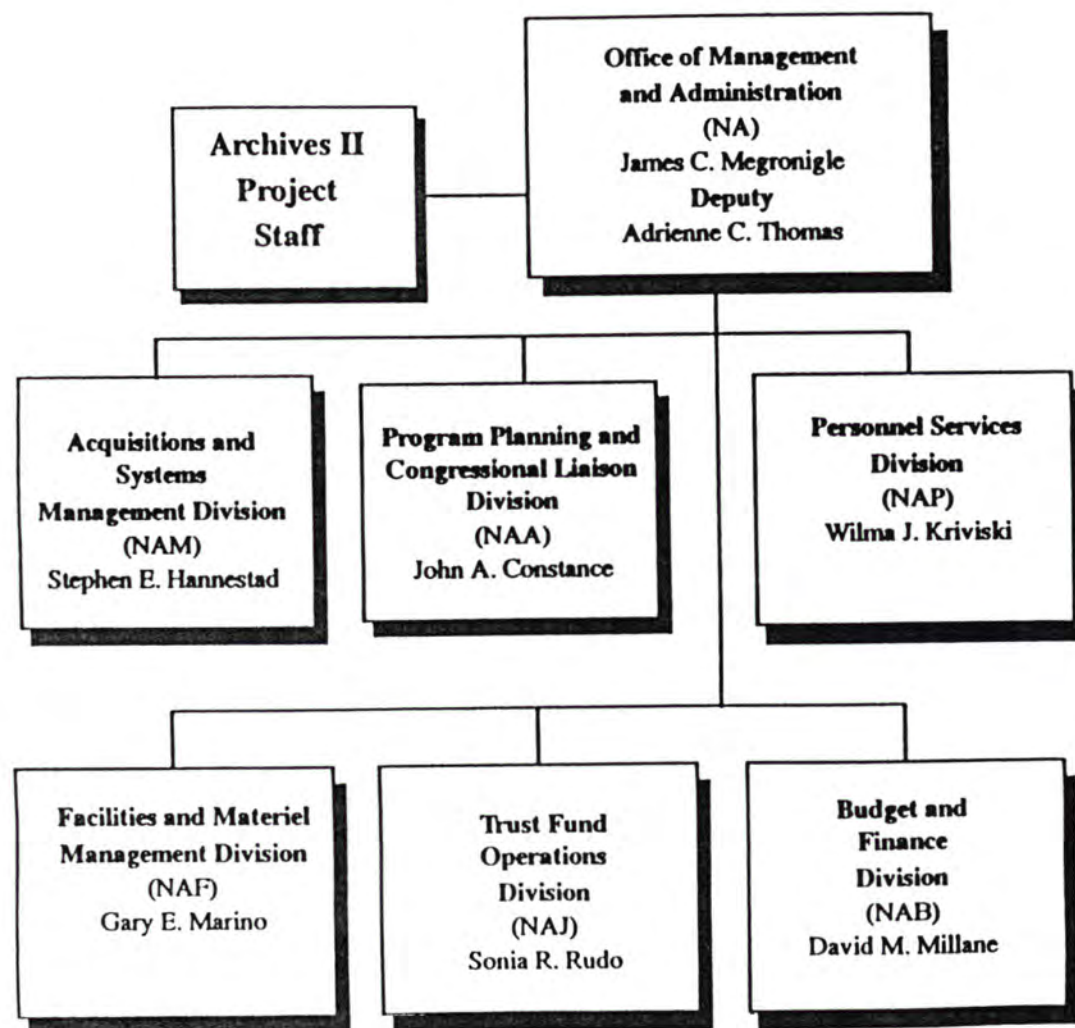
Alaska Region (11NS)
 Thomas E. Wiltsey

1993 Resources		
Nationwide		
	C.O.	Field
Funding (\$000):		
Direct	\$5,101.4	\$4,288.7
Reimbursable	215.0	
Personnel (FTE):		
Direct	63	101
Reimbursable	4	

Office of Special and Regional Archives
 Appraisal and servicing of electronic records
 Acceptance and servicing deposited Congressional records
 Servicing regional records and national records regional significance
 Archival processing
 Records declassification
 Records preservation
 Reference services
 Identification/development of applicable high technologies



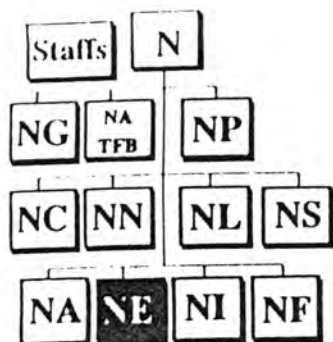
Office of Management and Administration



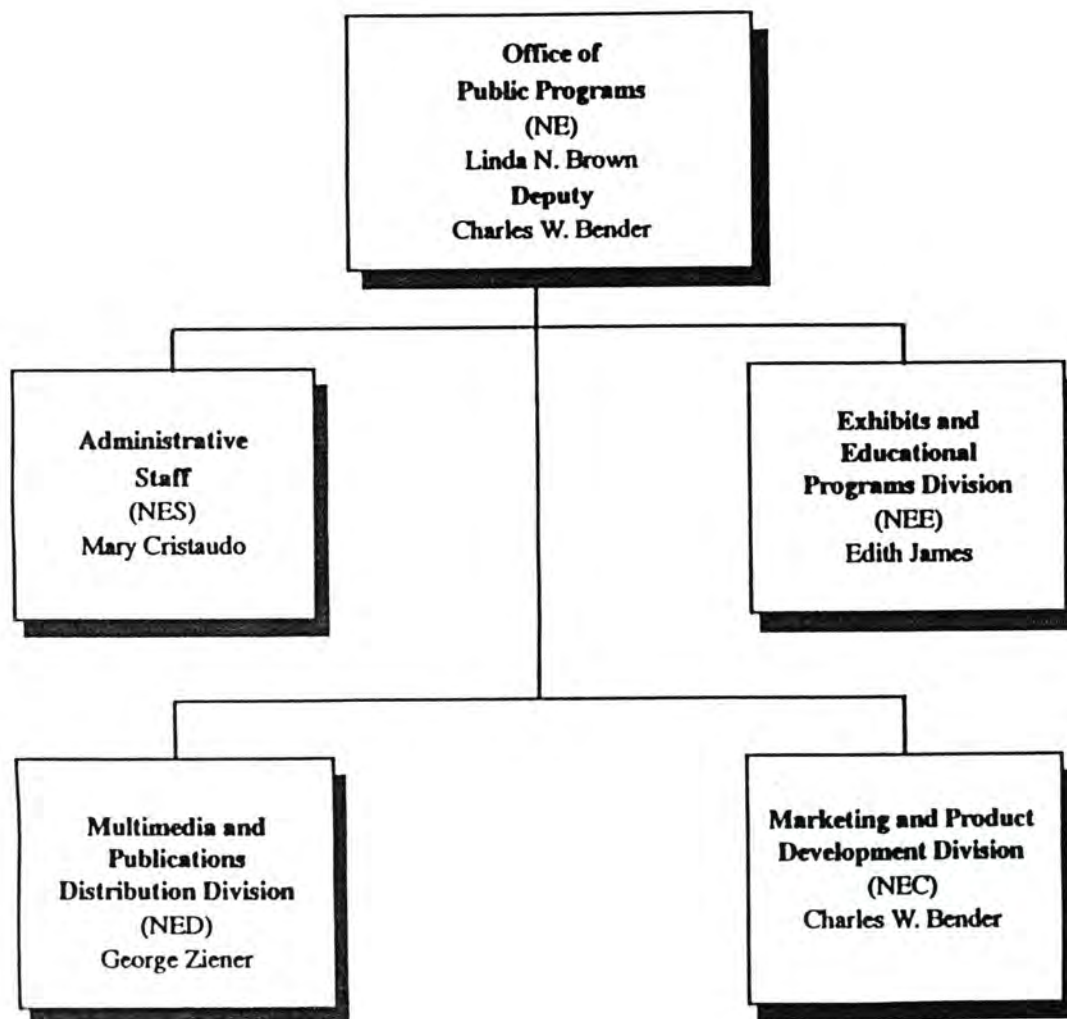
1993 Resources		
	Nationwide	
	C.O.	Field
Funding (\$000):		
Direct-program	\$ 16,395.4	
Direct-uncontrollable	63,767.7	
Reimbursable	194.0	
Personnel (FTE)		
Direct	171	
Trust Fund	18	

Office of Management and Administration

Nationwide administrative services
 Archives II planning and construction
 Program analysis and evaluation
 Internal and external directives
 Personnel administration
 Procurement
 Agencywide ADP systems
 Personnel, physical, and information security
 Congressional relations
 OMB relations
 Budget formulation, presentation, and execution
 National Archives Trust Fund operations
 National Archives Gift Fund
 Personal property storage and control
 Maintenance and repairs to National Archives Building
 Mail management
 External reports
 Committee management



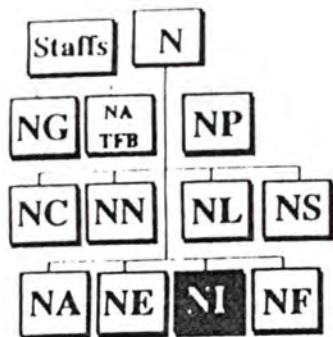
Office of Public Programs



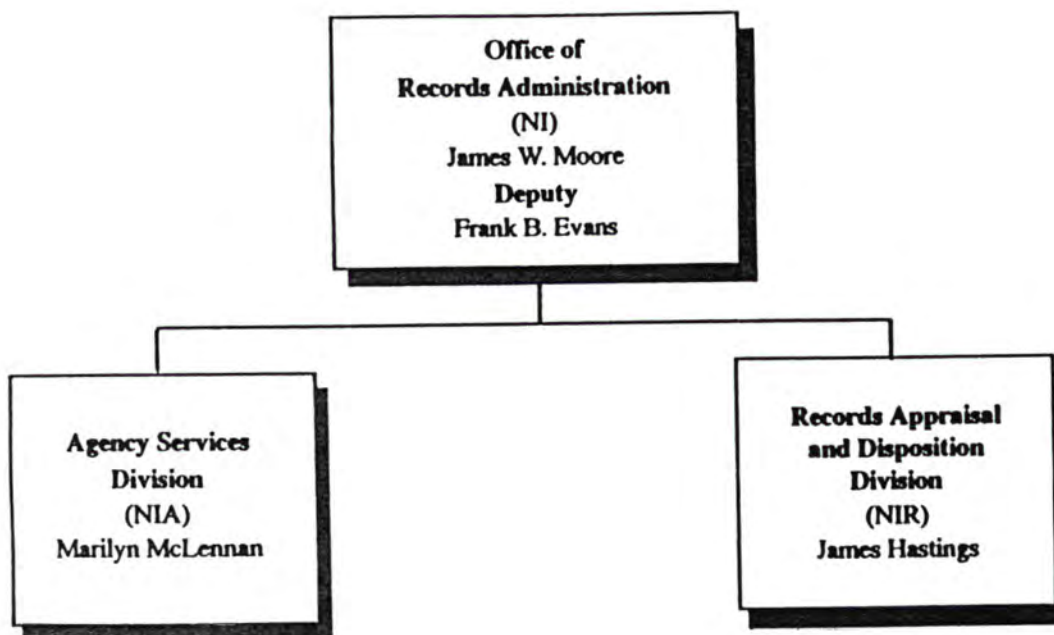
1993 Resources		
Nationwide		
	C.O.	Field
Funding (\$000):		
Direct	\$2,685.5	
Reimbursable	743.0	
Personnel (FTE):		
Direct	43	
Trust Fund	36	
Reimbursable	19	

Office of Public Programs

- Distribute Government-produced audiovisual
- Exhibitions
- Teaching packages development
- Museum shops
- NARA-related publications
- Public events
- Public workshops
- Volunteer program



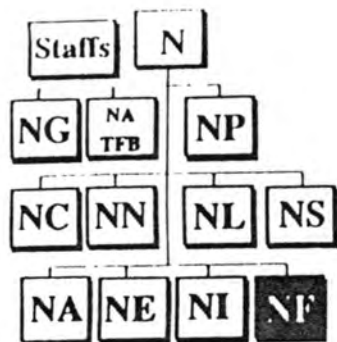
Office of Records Administration



1993 Resources		
Nationwide		
	C.O.	Field
Funding (\$000):		
Direct	\$ 2,607.2	
Reimbursable	115.0	
Personnel (FTE):		
Direct	41	
Reimbursable	3	

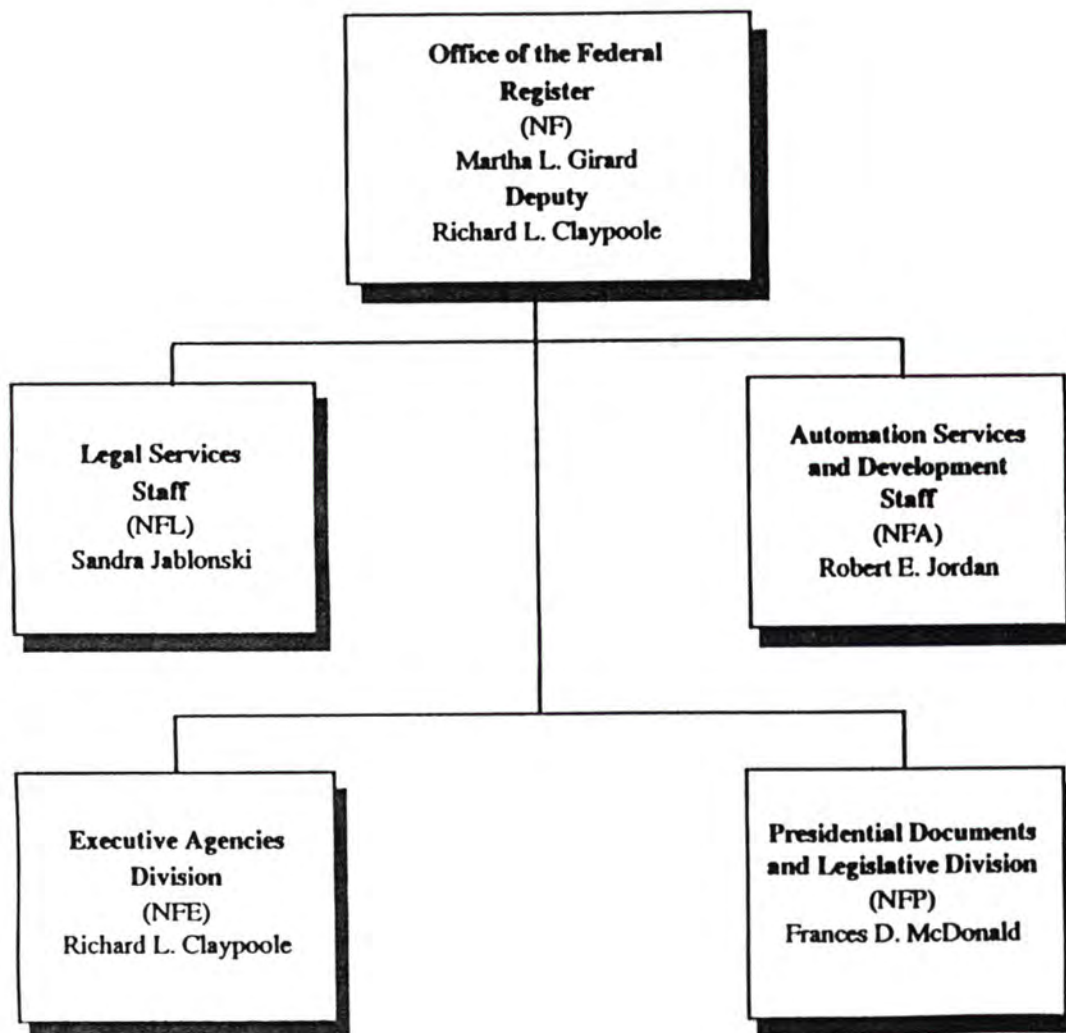
Office of Records Administration

Appraisal of non-electronic records
 Liaison with agency records officers
 Records management guidance
 Publications about records management
 Inspection of agency records programs
 Vital records program
 Monitoring archival records in agency custody



Office of the Federal Register

1993 Resources		
Nationwide		
	C.O.	Field
Funding (\$000):		
Direct	\$4,146.1	
Personnel (FTE):		
Direct	70	



Office of the Federal Register

Federal Register
 Code of Federal Regulations
 Slip laws
 U.S. Statutes at Large
 United States Government Manual
 Weekly Compilations of Presidential Documents
 Public Papers of the Presidents
 Compilation of Privacy Act Issuances
 Receiving electoral college ballots
 Receiving Constitutional amendments
 Custodian of interstate compacts
 Agency assistance and workshops

Appendix B

10 Point Plan Introduced by Archivist Wilson
in 1987

10 POINT PLAN

1. Plan, design and develop archival facilities to meet the critical space needs of NARA for the year 2010.
2. Take a leadership role in computerization of archival records, emphasizing compatibility of data bases both internally and with other agencies/institutions.
3. Develop strategies for NARA to assume a leadership role in formulating a national collecting policy.
4. Take steps to insure NARA remains, or is reinstituted, as the central repository for all Federal records of enduring value.
5. Foster and encourage greater creativity, cooperation and effectiveness in the management and administration of NARA throughout the United States, particularly as related to field operations.
6. Refine technologies and methodologies and implement long-range conservation strategies to preserve the Nation's historical and cultural documents.
7. Expand career opportunities and training for all NARA employees.
8. Expand the role and involvement of citizens at all levels of the National Archives.
9. Stimulate outreach activities for increased impact and public understanding of NARA throughout the Nation.
10. Seek a satisfactory balance between research use and preservation of Federal records.

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Seymour M. Hersh, "Nixon's Last Cover-Up: The Tapes He Wants the Archives to Suppress." The New Yorker (December 14, 1992), 76-95.

Appendix D

LITIGATION

Attached is a current list with explanations of all major pending cases with the National Archives.

ATTACHMENT

MAJOR CASES

Armstrong v. EOP -- Scott Armstrong and the National Security Archive, filed this case in United States District Court for the District of Columbia on the last day of the Reagan administration to block destruction of certain electronic materials created by the National Security Council and the Executive Office of the President using their PROFS computer system. The district court entered a preliminary injunction ordering the preservation of certain computer backup tapes pending resolution of the case on the merits. The district court denied the Government's motion to dismiss and the Government appealed. The United States Court of Appeals for the District of Columbia Circuit held: 1) that there was no judicial review of the President's recordkeeping decisions under the Presidential Records Act, 2) that private litigants could not sue an agency for failure to comply with its recordkeeping guidelines, but could sue the Archivist and the head of an agency for their failure to inform the Attorney General about allegations of record removal or destruction, and 3) the district court could rule on remand on the issue of whether the recordkeeping guidelines given to NSC employees were adequate. When the case was remanded to the district court in 1991, the plaintiffs filed a second amended complaint adding specific allegations that the Archivist had violated the Federal Records Act by failing to request that the Attorney General initiate an action to prevent NSC and EOP personnel from destroying records in contravention of the applicable guidelines. Plaintiffs then proceeded to take extensive discovery and dispositive motions were filed in the summer of 1992. While awaiting a decision on the merits, plaintiffs were granted a temporary restraining order following the November 3, 1992, election preventing defendants from destroying backup tapes from the Bush Administration in the normal course of business. In addition, plaintiffs were permitted to file a third amended complaint adding allegations that defendants were destroying records on the other computer systems used in the Bush White House. Plaintiffs have recently filed a motion for a preliminary injunction, to which defendants have objected. Defendants put forward the alternative of giving the Archivist temporary custody of all of the backup tapes pending resolution of the case on the merits.

Kutler v. Wilson and Kutler and Public Citizen v. Wilson and Nixon, Defendant-intervenor In March 1992, Stanley Kutler, a history professor at the University of Wisconsin

and an author of a book on Watergate, filed two lawsuits against NARA. The first is a Freedom of Information Act suit seeking access to a 27,000 page tape log and other finding aids created during the processing of the Nixon tapes. NARA withheld these materials as derivative of the Nixon presidential materials, subject only to the disclosure provisions of the Presidential Recordings and Materials Preservation Act and not the FOIA. NARA filed a motion to dismiss and the plaintiff has responded. The case is awaiting a decision by U.S. District Court Judge Norma Holloway Johnson. In the second suit, brought under provisions of the Administrative Procedures Act, Kutler is joined by and represented by Public Citizen. Both plaintiffs claim that NARA has unreasonably delayed the release of the Nixon tapes. Nixon intervened in this suit. Plaintiffs took extensive discovery this past summer and have recently filed a motion to compel certain discovery which NARA refused to produce under a claim of privilege. The parties are currently briefing this issue. If the Court decides against NARA on these claims of privilege, it is likely that more discovery will ensue.

Katz v. NARA -- This is an action brought under the Freedom of Information Act for the autopsy photographs of President Kennedy which were donated by the Kennedy family to NARA by a deed of gift. The deed of gift restricts access to the photographs to recognized pathologists and other scientists who receive permission from the Kennedy family representative. The plaintiff, represented by Public Citizen, claims that these photographs were originally federal records that should not have been turned over to the Kennedy family following the assassination. The Government filed a motion to dismiss and the case has been fully briefed. Oral argument is scheduled for December 16, 1992.

McKone v. NARA -- This is another action brought by Public Citizen under the Freedom of Information Act for a document that plaintiff claims is in the Reagan Presidential Library. Plaintiff claims that this document is an agency record of the National Security Council and therefore subject to FOIA. NARA filed a motion to dismiss based on the fact that records in the Reagan Library are subject to the Presidential Records Act and FOIA does not provide a means of access until 5 years after the Presidential transition. NARA has filed a motion to dismiss and is awaiting a decision.

TITLE VII LITIGATION

McKoy v. Wilson -- This case was filed in the United States

District Court for the District of Columbia (hereinafter "District of D. C.") in April 1990 by Elaine McKoy, a former GM-14 supervisor in the Office of Management and Administration (NA) who was removed for performance and conduct reasons in April 1990, Joan Stewart, a GS-9 Contract Specialist in the Acquisitions Management Branch (NAMA), and Nora Swilling, a GS-9 Property Management Specialist in the Materiel Management Branch (NAFM). All three plaintiffs had previously filed numerous administrative EEO complaints against NARA. While the claims of McKoy differ significantly in substance from those filed by Stewart and Swilling (both of whom used to work as GS-9 Contract Specialists for McKoy in what is now NAMA), all three allege that they are the victims of racial and gender discrimination, and of retaliation for participating in activities protected by Title VII.

None of Stewart's and Swilling's claims were heard administratively before the lawsuit was filed. The Equal Employment Opportunity Commission (EEOC) found no discrimination with respect to McKoy's first EEO complaint, a decision NARA adopted completely; the hearings of subsequent administrative complaints were scheduled to be heard, but later cancelled when McKoy filed the lawsuit. McKoy also appealed her removal to the Merit Systems Protection Board (MSPB). The MSPB upheld McKoy's removal in late August 1991.

At the present time, the suit is scheduled to go to trial in either February or March 1993; several earlier trial dates have been postponed, for a variety of reasons, including several changes in McKoy's attorneys. The U. S. Attorney's office in D. C. is representing NARA.

The parties are presently engaged in a mediation process. No settlement offers have been made by either side to date. Mediation is scheduled to end this week, and it is not known whether the period will be extended. Some discovery remains to be done by both sides, primarily depositions of potential witnesses who have not yet been deposed. The parties also must prepare and submit pre-trial briefs, which are due in mid-December for plaintiffs, and in early January for NARA. The NXL attorney assigned to this case since the first administrative hearing was scheduled in early 1990 is Christopher Runkel; one or more part-time Paralegal Specialists are also assigned, as the workload demands.

Featherson v. Wilson -- This action was brought in the District of D.C. by Shelley Featherson, a GS-9 Technical Publications Writer-Editor who is presently employed in the Office of the Federal Register (NG). Featherson alleges

racial discrimination in her nonselection for a GS-9 Writer-Editor position in the Publications Branch of the Office of Public Programs (NECM). Discovery has started, and the parties have exchanged interrogatories and requests for the production of documents. No trial date has been set. Mr. Runkel is the attorney assigned to this case.

Johnson v. Wilson -- This action was brought by Allen Johnson and James Parker, both Document Restorers in the Office of the National Archives' Document Conservation Branch (NNPD); the case is presently before the D. C. Circuit on appeal of the District Court's dismissal for lack of jurisdiction. Plaintiffs claim racial discrimination in connection with their nonselections for the same GS-11 Conservator position.

Plaintiffs attempted to sue NARA under title VII directly from an arbitration decision in NARA's favor. The Government moved to dismiss on the grounds that plaintiffs had failed to exhaust administrative remedies because they had not appealed the arbitration decision to either the Federal Labor Relations Authority (FLRA) or the EEOC as required by Title VII. The District Court granted this motion, and a three-judge panel of the D. C. Circuit initially upheld this decision, granting the Government's motion for summary affirmance. Earlier this year, however, plaintiffs moved for reconsideration of this decision, and a different three-judge panel vacated the summary affirmance order and accepted the appeal. A briefing schedule has been set, but not a date for oral argument. Mr. Runkel is assigned to this case.

Bouie v. Wilson -- Alonzo Bouie, a GS-9 section chief in the military personnel records activity, National Personnel Records Center (NCPM), filed this case over two nonselections at NCPM. He alleges racial, gender, and age discrimination, and retaliation. This is the second lawsuit filed by Mr. Bouie against NARA. The U. S. District Court for the Eastern District of Missouri (St. Louis), which is the district where NCPM is located, found no discrimination or reprisal on four different nonselections in the first case, a decision upheld by the Eighth Circuit Court of Appeals.

In the instant case, Mr. Bouie originally proceeded through the administrative EEO process, but failed to show up for the hearing of his complaints. NARA eventually issued a final decision of no discrimination on the complaints based upon the investigative file compiled by the contract investigator. Mr. Bouie then filed suit in the Eastern District of Missouri. The case is presently in the discovery process. Mr. Bouie's attorney recently filed a

petition to withdraw from the case because of non-payment of fees. No decision on the petition has been issued. Mr. Runkel is assigned to this case. No trial date has been set.

Wright v. Wilson -- This case was recently filed by Garry Wright, a former NCPM employee, in the Eastern District of Missouri. Mr. Wright alleges handicap discrimination, specifically failure to accommodate reasonably an alleged handicap. Mr. Wright resigned from NARA while the papers to remove him for excessive absence without leave (AWOL) were being prepared.

The Government has yet to file its answer in this case. It is expected that we will move for dismissal because Mr. Wright failed to exhaust his administrative remedies before filing suit. Dionne Koller, a third-year law student and part-time Paralegal Specialist, is assigned to the case under Mr. Runkel's supervision.

Bemah v. Wilson

This is a civil complaint of discrimination against NARA management filed in U.S. District Court by a former NARA employee. This case is in the discovery phase of the litigation. We recently responded to Plaintiff's document request. AUSA Fred Haynes has confirmed that this case will go into mediation. Luis Vidal is assigned to this case.

Clifford v. Wilson

This is a civil complaint of discrimination against NARA management filed in U.S. District Court by an employee of the Washington National Records Center in Suitland, Maryland. Ms. Clifford has recently served interrogatories and request for production of documents to NARA. We are beginning to prepare our responses and are gathering the requested documentation. Luis Vidal is assigned to this case.

ADMINISTRATIVE TITLE VII CASES

DeBoe v. Wilson, EEOC Case No. 280-92-4088X

This is an administrative EEO complaint brought against NARA management by an employee at the National Personnel Records Center in St. Louis. We are awaiting a ruling from Judge Emily Rice in St. Louis on our motion for a recommended decision without a hearing. The motion was submitted on July 17, 1992, thus, the ruling is expected

shortly. Luis Vidal is assigned to this case.

Dees v. Wilson, EEOC Case No. 033-92-2036X

This is an administrative EEO complaint brought against NARA management by Philip Dees, a GS-9 Archives Specialist who is presently employed in the Records Declassification Division. Dees alleges racial discrimination in his nonselection for a position in the Field Operations Center. On December 3, 1992, the EEOC Administrative Judge issued a finding of no discrimination in the complaint filed by Mr. Dees. NARA, consistent with the EEOC's finding, will issue a final decision of no discrimination. Luis Vidal is assigned to this case.

Jett v. Wilson

This is an administrative EEO complaint brought against NARA management by Vivian Jett, a GS-12 Labor Relations Specialist in the Personnel Operations Branch in St. Louis. Ms. Jett alleges racial discrimination in her denial of a promotion to a GS-13. Her case has been investigated and she has requested a hearing on the merits. We will contact the EEOC for the appointment of an Administrative Judge. Luis Vidal is assigned to this case.

Arvo v. Wilson

This is an administrative complaint of discrimination brought against NARA management by Adeline Arvo, a GS-13 former employee of the Personnel Services Division in Washington, D.C. Ms. Arvo alleges racial discrimination and age discrimination in her performance appraisal and in the lack of program recognition. An independent investigation of her complaint was conducted and we forwarded the investigative report to Ms. Arvo on November 16, 1992. Ms. Arvo has 30 days to request a hearing before and administrative judge or an immediate final decision. Luis Vidal is assigned to this case.

Vanessa Gantt-Baker v. Wilson, EEOC No. 033-93-5035X

This is an administrative EEO complaint of discrimination brought against NARA management by an employee of the Budget and Finance Division in Washington, D.C. Ms. Gantt a GS-7 Budget Assistant alleges racial discrimination in the selection of a Budget Analyst through the outstanding scholar program. The case was investigated and Ms. Gantt requested a hearing on the merits. The case has recently been assigned to Judge Tomas of the EEOC. We have contacted both Judge Tomas and Ms. Gantt-Baker's counsel to

inform them of our intent to use discovery. No hearing date has been set. Luis Vidal is assigned to this case.

Other Litigation

Oglesby v. Dep't. of the Army -- This is a Freedom of Information Act (FOIA) lawsuit presently before the District of D. C. The two issues of paramount importance to NARA are: whether NARA staff must do research among unrestricted records in the National Archives in response to FOIA requests, or whether we can comply with FOIA by making the records available in our research room; and whether NARA's fee statute for records in the National Archives supersedes the FOIA's fee and fee waiver provisions.

NARA originally won on the first of these issues before the District Court, with the Court holding it did not have to decide the second. On appeal, the D. C. Circuit remanded the case, holding that Oglesby had not exhausted his administrative remedies before filing in court. The Court of Appeals stated in *dicta*, however, that NARA had complied with the FOIA when it told Oglesby the unrestricted records he sought would be made available in NARA's research room. Oglesby subsequently filed an administrative appeal on the availability and fees issues, which NARA denied. He then refiled in District Court, which is where proceedings presently stand. NARA has once again moved to dismiss on the grounds that it complied with the FOIA, and Oglesby has opposed this motion. A decision is pending. Mr. Runkel and Amy Krupsky are assigned to this case.

St. Hilaire v. Department of Justice -- This is a FOIA case that is now before the D. C. Circuit on appeal. It was brought by a prisoner in an Arizona state prison against several agencies, including NARA.

St. Hilaire wants certain unrestricted State Department records from the 1930s, and he wants a fee waiver. We responded to his request by saying we could make the copies (he had specifically identified the records of interest), that the FOIA's fee and fee waiver provisions did not apply, and that we would send him copies if he paid for them. Before the District Court, the Government moved for dismissal on the basis of the Oglesby Court of Appeals decision, and this motion was granted. St. Hilaire then appealed, and we moved for summary affirmance. A decision on that motion is pending, since the panel assigned has decided to wait for two other panels to issue decisions. These other cases do not involve NARA's issues, but issues involving the Department of Justice's decision to put

former Austrian President Kurt Waldheim on the Nazi watch list. Those issues are pending in this case, as well. Mr. Runkel and Ms. Krupsky are assigned to this case.

Price v. United States -- This case, which was filed in 1983, involves a cache of photographs seized by the United States Army in Germany shortly after World War II, transported to the U. S., and eventually accessioned into the National Archives. The photographs were taken by Heinrich Hoffmann, who was Adolf Hitler's personal photographer. Many of the photographs are of Hitler and other top Nazis, and of official Nazi events. The photographs belonged to Hoffmann.

In the early 1980s, Hoffmann's son and daughter, both of whom are now deceased, assigned their claim to the photographs to Billy F. Price, a Houston businessman who was also a collector of paintings by Hitler, and other Hitler memorabilia. Price demanded the return of the photographs and four paintings, which the Army still has, and, when the Government refused, Price filed a Federal Tort Claims Act suit in District Court in Houston (Southern District of Texas). In early 1989, the District Court judge issued a finding of liability against the U. S., but he has yet to finalize his decision by awarding damages. Both sides periodically attempt to force a decision from the judge, but he has successfully resisted, to date. Once a damage award has been made, the Government intends to appeal the decision to the 5th Circuit. Mr. Runkel has been assigned to this case since 1983, when he was a Paralegal Specialist with the General Services Administration.

Nuremberg Prisoner Records -- The Department of Justice is preparing to file a replevin action in the U. S. District Court for the Southern District of Georgia (Savannah) to recover, pursuant to 44 U.S.C. § 2905(a), numerous original Army records created between 1945 and 1947 by the unit that served as the jailors for the top Nazi war criminals -- including Hess, Goering, and Speer -- who were tried at Nuremberg. The records were removed from the unit's headquarters by then Major F. C. Teich, Jr., the Assistant Commander, when he was reassigned. Teich's son eventually sold the records to James P. Atwood, a retired Army Lieutenant Colonel, who has attempted to sell them, as well. The records left behind by Teich were accessioned into the National Archives in 1956. Mr. Runkel is assigned to this case.

EPA Clean-up Action -- The U. S. Environmental Protection Agency (EPA) is engaged in the Superfund clean up of a approved hazardous waste site in Greer, South Carolina, to

which NARA had sent certain containers of materials used NNPD in its preservation efforts. NARA, and several other agencies, are potentially responsible for at least some of the clean-up costs. A group of private companies who disposed of waste at the site are attempting to get NARA to join with them in a negotiated settlement, but the Department of Justice, who is representing us in this matter, recommends that we settle separately. No final decision has been made, in part because no final dollar amount has been set.

Vivian Kettler v. United States of America,
C.A. No. 92-0472-CV-W-2

Vivian Kettler filed a tort claim against NARA which was denied on November 25, 1992. Ms. Kettler alleges that the injuries she sustained when falling on the sidewalk of the Truman Library were caused by NARA's negligence. She has now filed suit in U.S. District Court for the Western District of Missouri. An answer is due on December 4, 1992. We submitted a litigation report to Jerry Short, the Asst. United States Attorney. Luis Vidal is assigned to this case.

BID PROTESTS

Integrity v. NARA

This is bid protest involves the acquisition of security guard services at the Jimmy Carter Library in Atlanta, Georgia. Integrity alleges that it was improperly excluded from the competitive range. The case is still pending before the GAO. We submitted the GAO report setting forth NARA's arguments on September 22, 1992. Luis Vidal is assigned to this case.

ISN v. NARA

This is bid protest involves the award to SYSCON of the Integrated Communications and Administrative Support System (ICASS) contract at Archives II. The protest filed by another protester, HFSI, was denied by the GSBICA on November 24, 1992. An unredacted opinion, however, has not yet been released. Once the unredacted opinion is released, ISN will have 3 days to reactivate its protest. Luis Vidal is assigned to this case.

OTHER LEGAL ISSUES

Ethics training and counselling -- The General Counsel

National Archives



Archivist of the United States

Appendix E

Washington, DC 20408

November 23, 1992

I have announced today a comprehensive action plan that will help to resolve the issues surrounding the recent Report of the Senate Committee on Governmental Affairs, "Serious Management Problems at the National Archives and Records Administration." A copy of the action plan is attached.

The positive steps contained in this action plan, as well as additional actions to be taken in the future, will enable the National Archives to meet the management challenges of occupying Archives II and implementing an agency-wide strategic plan.

I look forward to consulting and working with National Archives constituents in employing this new management structure and in leading the National Archives as it addresses these matters.

Sincerely,

DON W. WILSON
Archivist of the United States

November 23, 1992

Action Plan

In 1987, I became the first Archivist of the United States appointed by the President under the new independence law for the National Archives and Records Administration. My stated goal then as now was to lead the National Archives from a custodial-oriented agency to a premier national cultural institution. I enunciated a ten-point plan which I believe still charts us on that course.

The agency is now faced with a critical report issued by the Senate Governmental Affairs Committee. In order to address the management concerns outlined in the Senate report, I am moving ahead with a plan of action that will resolve those problems and perceptions.

This action plan is designed to keep us on that originally charted course, to prepare the institution for the new management challenges of occupying Archives II, and to set in place a strategic plan for the 1990's. I believe these actions will positively address the problems and perceptions raised by the Senate report, as well as a number of concerns of our major constituencies. Upon implementation, these actions will create a more participatory management structure for staff and supporters to understand and influence the programs and priorities of the National Archives.

While my own reviews and independent investigations will be ongoing until the allegations in the Senate report are resolved, it is my hope that this plan will assure the archival community and staff that the National Archives is moving forward to meet every challenge. Each part of the plan addresses a specific need or a widely-held perception of the agency.

I. I have relieved the current Inspector General of his duties and have placed him on administrative leave pending conclusion of my own investigation. I have named the Assistant Inspector General to be Acting Inspector General.

II. I will continue to work with the Department of Justice and the President's Council on Integrity and Efficiency (PCIE) for a full and impartial review of the allegations contained in the Senate report. Toward this end, I have asked the chairman of the PCIE to designate for NARA an Inspector General who will examine the matters in the Senate report. The Chairman has indicated his willingness to designate an independent inspector general, and I now expect the designate to complete this review and to file a report no later than February 1, 1993. As I have indicated to Senator Glenn, while I disagree with some of the characterizations in the Senate report about the meaning and motive of certain actions of my subordinates, I strongly welcome this impartial review. Such a review will also provide the named employees a prompt, objective and timely resolution of the matter.

GAO REPORT ON THE NUMBER OF EEO COMPLAINTS FILED IN
FISCAL YEARS 1988 - 1991

The attached indicates a high number of multiple complaints filed by a few individuals and this makes the total number of complaints appear disproportionately high for an agency the size of the National Archives. Also, the majority of the other complaints came from employees at the National Personnel Records Center in St. Louis, Mo. At this location the high number of complaints is due to hundreds of low grade level positions having little promotion potential. It has become almost routine for employees who are not selected for the very few promotion opportunities to file complaints. The other agencies in the survey that are comparable in size to the National Archives do not have a large workforce in low graded, dead end jobs.

GAO Report on EEO Complaints Filed in Fiscal Years 1988-1991
by Agencies with 100 to 2,500 Employees

NARA had a total of 167 complaints filed during report period.

108 of these complaints were filed by 25 employees.

Of those employees who filed multiple complaints -

22 employees filed between 2 and 6 complaints each.

3 employees (McKoy, Stewart, and Swilling) filed a total of 50 complaints.

Complaints filed per report:	32	38	52	45
Less McKoy, Stewart, Swilling complaints:	<u>-4</u>	<u>-19</u>	<u>-22</u>	<u>-5</u>
	28	19	30	40

ISSUE: Archives II Financing

The Archives II Building was financed through the sale of bonds. Beginning in 1994, and continuing for the next 26 years, NARA will need an added appropriation for the annual payment of \$28,971,000.

The addition of the Archives II Building to the agency inventory will add new recurring and non-recurring costs. Recurring expenses will total \$18,162,000. This will include personnel costs for 79 FTE to complete archival work required by the move and to serve the public; and for building operations, maintenance, and management; security, utilities; telecommunications; and other costs associated with maintaining the new building.

Non-recurring expenses will total \$22,406,000. This will cover one-time costs of preparing non-textual records for the move; completing the relocation of three major ADP systems; installation of two major new ADP systems; purchase of audiovisual and laboratory equipment, systems furniture; and funding for the actual move of records and equipment.

Responsible Office: Office of Management and Administration